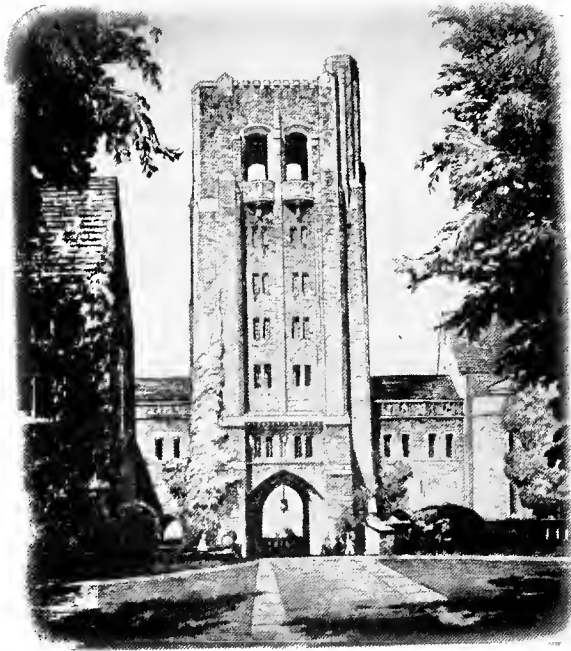


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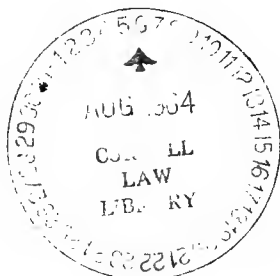
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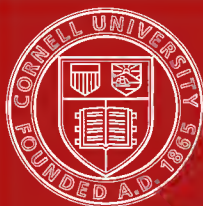
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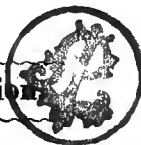
TRANSLATED

BY

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Third Edition



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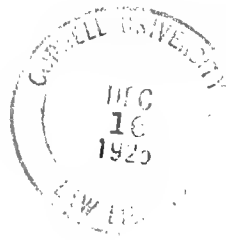
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TO  
HIS LORDSHIP  
**MARQUIS HIROBUMI ITO**  
PRESIDENT OF THE COMMITTEE FOR  
THE REVISION OF THE  
COMMERCIAL CODE  
THIS BOOK IS RESPECTFULLY DEDICATED.



## PREFACE.



**T**HE Japanese Commercial Code has taken effect on June 16th, 1899. It follows the German system even closer than the former one, and a knowledge of German law will be not less indispensable for the scientific explanation of this Code than it is for the Japanese Civil Code and Code of Civil Procedure.

A translation of the law and regulations relating to foreign Insurance Companies is appended.

The translator acknowledges his obligation to Prof. H. T. Terry for his assistance in putting the translation into a correct English shape.

The title page of each copy of this book is stamped with the name stamp of the translator.

Tokyo, April 1901.

DR. L. H. LOENHOLM.



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# BOOK I.

## GENERAL PROVISIONS.

### CHAPTER I.

#### THE APPLICATION OF THE CODE.

##### I.

In case there is no provision in this Code as to a commercial matter, the customary commercial law shall apply, or if there is no such customary law, the Civil Code shall apply.

##### 2.

The provisions of this Code apply to commercial transactions of public juridical persons only if not otherwise provided by law or regulations.

##### 3.

If a transaction is a commercial one with regard to one party thereto, the provisions of this Code apply to all parties.

---

## CHAPTER II.

### TRADERS.

4.

A trader in the sense of this Code is a person who in his own name carries on commercial transactions as a business.

5.

When a minor or a married woman carries on a commercial business, such fact must be registered.

6.

A minor or a married woman, who has been permitted to become a partner with unlimited liability of a commercial company, is treated as a person of full capacity as to the business of such company.

7.

When a guardian carries on a commercial business for his ward, such fact must be registered.

A restriction on the right of representation of the guardian cannot be set up against third persons acting in good faith.

8.

The provisions relating to commercial registration, trade names and trade books, do not apply to persons who buy and sell things as pedlars or on the streets or to petty traders.

---

## CHAPTER III.

### COMMERCIAL REGISTRATION.

9.

Facts required to be registered according to the provisions of this Code must be registered on the application of the person concerned in the Commercial Register kept by the court of his seat of business.

10.

Facts required to be registered at the place of a principal office must also be registered at the place of every branch office, except as otherwise provided by this Code.

11.

The court shall without delay publish every entry in the Commercial Register.

12.

A fact which is required to be registered cannot be set up against a third person acting in good faith, until after it has been registered and published; and not even then against a third person who for a just cause was ignorant of such fact.

13.

When a fact required to be registered has not been registered, at the place of a branch office the provi-

sions of Art. 12 apply only to business transacted at such branch office.

14.

A registration may be set up against third persons, even though it differs from the publication.

15.

If any alteration afterwards takes place in a fact registered, or if such fact ceases to exist, such alteration or cessation must without delay be registered by the parties concerned.

---

## CHAPTER IV.

### TRADE NAMES.

16.

A trader may use his family name or his full name or any other denomination as his trade name.

17.

The trade name of a commercial company\* must contain the word 合名會社 (gōmeikwaisha), 合資會社 (gōshikwaisha), 株式會社 (kabushikikwaisha) or 株式合資會社 (kabushikigōshikwaisha) according to its nature.

---

\* See note to Art. 42.

18.

Where no commercial company exists, the trade name must not contain any word indicating the existence of a commercial company. This applies when a person takes over the business of a commercial company.

A person who acts in contravention of this provision is liable to a fine of from five yen to fifty yen.

19.

A trade name which is already registered for another person cannot be registered in the same city, town or village for the same business.

20.

A person who has his trade name registered may demand against any one using the same or a similar trade name for the purpose of improper competition, that he discontinue such use ; but this does not affect any claim for damages.

A person who uses the registered trade name of another in the same city, town or village for the same kind of business is presumed to do so for the purpose of improper competition.

21.

The assignment of a trade name can be set up against third persons only if it has been registered.

22.

When a person has assigned his commercial business together with the trade name, he is, unless the parties have expressed a different intention, not allowed for a period of twenty years to carry on another business of the same kind in the same city, town or village.

If such person expressly contracts not to carry on another business of the same kind, such contract is binding only for the same *Fu* or *Ken*\* and only for a period not exceeding thirty years.

Even outside of the limits stated in the preceding two paragraphs such person is not allowed to carry on a business of the same kind, if he does so for the purpose of improper competition.

23.

The provisions of Art. 22 apply correspondingly where a commercial business is assigned without the trade name.

24.

When a person for whom a trade name has been registered has ceased to use it or has changed it, without having registered such fact, any party interested may apply to the court for the cancellation of the registration.

In such case the court shall summon the person for whom the registration was made to present his objections within a reasonable time to be fixed by the court. If no objection is made within such time, the registration shall be forthwith cancelled by the court.

---

\* *Ken*, 縣 corresponds most near to an English "county." *Fu* 府 is a city excluded from the *ken*, in which the city government performs the functions of a *ken* government. There are only three *fu*, namely, Tōkyō, Kyōto, and Ōsaka.

---

## CHAPTER V.

### TRADE BOOKS.

#### 25.

A trader is bound to keep books and to record therein accurately and clearly his daily business and all circumstances affecting his property. As to household expenses only the total monthly amount need be entered.

As to the selling transactions of a retail business, only the total amount of each day's cash and of each day's credit sales need be separately entered.

#### 26.

A trader at the time of commencing business, and a commercial company at the time when its formation is registered, and both also once in each subsequent year at a fixed time, must make a general inventory of movables and immovables, of credits and debts and of other property and a balance-sheet, and enter both in books specially kept for such purpose.

In the inventory a valuation must be inserted of the movables and immovables, and of the credits and other property as at the time of making the inventory.

#### 27.

If a commercial company distributes profits twice a year or oftener, it must make an inventory and balance-sheet according to the provisions of the preceding article at the time of each distribution.

28.

A trader must preserve his trade books and business correspondence for a period of ten years.

Such period is to be computed for each trade book from the time when it is closed.

---

## CHAPTER VI.

### TRADE ASSISTANTS.

29.

A trader may appoint a procurator\* to carry on his business either at the principal office or at a branch office.

30.

A procurator is authorized to do in the place of the principal all acts in or out of court relating to the principal's business.

A procurator may appoint and dismiss *bantō*,† clerks and other assistants.

Any limitation of the power of representation of a procurator cannot be set up against third persons acting in good faith.

31.

The principal must register the appointment of a procurator and the termination of his power of repre-

---

\* *Shihainin*, 支配人, equivalent to the German *Prokurist*.

† The word *bantō* 番頭 is generally used in the treaty ports of Japan, and denotes a kind of head clerk, what in German would be called *Handlungsbevollmächtigter*.



sentation at the place of the principal office or branch office for which he is appointed.

32.

Without the permission of the principal a procurator is not allowed to undertake commercial transactions on his own account or on that of a third person, or to become a partner with unlimited liability of a commercial company.

If a procurator in violation of the foregoing provisions undertakes a commercial transaction on his own account, the principal may consider such transaction as done on his account.

This right of the principal ceases, if it is not exercised for two weeks from the time when the principal receives notice of such transaction, or if a year has elapsed since the time of the transaction.

33.

A trader may appoint a *bantō* or a clerk for particular parts of, or for single matters relating to his business.

A *bantō* or a clerk is authorized to do all transactions relating to the matters entrusted to him.

34.

Assistants other than procurators, *bantō* or clerks are presumed not to be authorized to do juristic acts for the principal.

35.

By the provisions of this chapter the application of the provisions of the Civil Code as to the relations

arising from the hiring between the principal and trade assistants is not affected.

---

## CHAPTER VII.

### COMMERCIAL AGENTS.

#### 36.

A commercial agent\* is a person who, without being an assistant, habitually acts on behalf of a particular trader as his representative or intermediary in commercial transactions belonging to the branch of business carried on by such trader.

#### 37.

When a commercial agent has acted as representative or intermediary in a commercial transaction, he must without delay give notice thereof to the principal.

#### 38.

Without the permission of the principal, a commercial agent is not allowed to undertake on his own account or on account of a third person commercial transactions falling within the branch of business carried on by the principal, or to become a partner with unlimited liability of a commercial company whose object is the same branch of business.

If an agent acts in contravention of these provisions, the provisions of Art. 32, 2 and 3 apply correspondingly.

---

\* In the English Law the word "agent" has a much wider meaning.

39.

When a commercial agent has been entrusted with the sale of goods, notice of any defect in the goods sold or of any deficiency in their quantity, or any notice relating to the performance of the contract of sale, may be given to him instead of to the principal.

40.

When no time of duration has been fixed by the parties, the agency may be terminated by either party on a two months' notice.

Irrespective of whether a time of duration has been fixed or not, the contract may be terminated at any time by either party, if an unavoidable necessity exists for doing so.

41.

A commercial agent has a lien on all property whose possession he holds on account of the principal, for all obligations arising in his favour from his acting as representative or as intermediary in commercial transactions, unless a different intention has been expressed.

---

## BOOK II.

### COMMERCIAL COMPANIES.

#### CHAPTER I.

##### GENERAL PROVISIONS.

42.

A commercial company\* in the sense of this Code is an association† established for the purpose of doing commercial transactions as a business.

43.

There are four kinds of commercial companies, namely: Ordinary partnerships, limited partnerships, joint stock companies and joint stock limited partnerships.

44.

A commercial company is a juridical person.

A commercial company has its domicile at the place of its principal office.

---

\* The expression "commercial company" is used in this translation to denote not only companies, but also partnerships.

† In Japanese: *shadan* 社団, see my translation of the Civil Code, note to Art. 37.

45.

The formation of a commercial company can be set up against third persons only after it has been registered at the place of its principal office.

46.

A commercial company cannot make preparations for commencing business until it has been registered at the place of its principal office.

47.

If a company does not commence business within six months after registration at the place of its principal office, the court may on the application of the public procurator or of its own motion order its dissolution. If, however, good cause is shown, the above mentioned term may be extended by the court on the application of the company.

48.

If a commercial company does acts contrary to the public welfare or to good morals, the court may on the application of the public procurator or of its own motion order its dissolution.

---

## CHAPTER II.

### ORDINARY PARTNERSHIPS.\*

#### SECTION I.

##### FORMATION.

49.

The formation of an ordinary partnership must be by a written contract.

50.

The partnership contract must be signed by all the partners, and must specify :—

1. The object of the partnership ;
2. Its trade name ;
3. The name and domicile of each partner ;
4. The place of the principal and of each branch office ;
5. The nature and value of the contribution of each partner, or the basis of the valuation of such contribution.

51.

The partnership must within two weeks from the day of the making of the partnership contract register at the place of the principal office and of each branch office the following facts :—

1. The facts mentioned under Nos. 1-3 of the preceding article ;

---

\* Gōmeikwaisha 合名會社.

2. The principal and each branch office ;
3. The date of the formation of the partnership ;
4. If the term of its duration or causes for its dissolution are fixed, such term or causes ;
5. The nature of the contribution of each partner, and the value of any contribution whose subject is property ;
6. If the representation of the partnership has been committed to one or more of the partners exclusively, the names of such partners.

If after the formation of the partnership a branch office is established, the registration provided for in the preceding paragraph must be made at the place of such branch office within two weeks, and the fact that a branch office has been established must be registered within the same time at the place of the principal office and of each other branch office.

If a new branch office is established within the jurisdiction of the Registry Office under whose jurisdiction the principal office or a branch office is situated, only such fact need be registered.

52.

When a partnership transfers its principal office or a branch office to another place, such transfer must be registered at the former place within two weeks, and at the new place the registration provided for in Art. 51, 1 must be made within the same time.

If the transfer is to a place within the jurisdiction of the same Registry Office, only the fact of transfer need be registered.

53.

If an alteration takes place in the facts mentioned in

Art. 51, 1, it must be registered at the place of the principal and of each branch office within two weeks.

---

## SECTION II.

### THE INTERNAL RELATIONS OF THE PARTNERSHIP.

#### 54.

So far as the relations between the partners are not otherwise determined by the partnership contract or by this Code, the provisions of the Civil Code as to association\* apply correspondingly.

#### 55.

When the contribution of a partner consists in an obligation\*\* existing in his favour, he is bound to make good the amount, if the debtor does not perform it when it falls due. In such case he is not only liable for interest, but must also pay damages.

#### 56.

Each partner has the right and it is his duty to manage† the affairs of the partnership, unless it is otherwise provided in the partnership contract.

---

\* Kumini 組合, see Art. 667 *et seq.* of the Civil Code.

\*\* The word "obligation" is used here as in my translation of the Civil Code, in the sense of the Roman Law to denote the right of the creditor as well as the duty of the debtor. See Book III of the Civil Code.

† The expression "manage the affairs" is used in reference to the internal affairs of the partnership only.



57.

The appointment and the dismissal of a procurator must be decided by a majority vote of the partners, even though special managing partners have been appointed.

58.

The consent of all the partners is required for any alteration of the partnership contract and for all transactions foreign to the object of the partnership.

59.

If a partner assigns the whole or a part of his interest in the partnership to another person without the assent of the other partners, such assignment cannot be set up against the partnership.

60.

Without the assent of the other partners no partner is allowed, either on his own account or on that of a third person, to undertake commercial transactions falling within the kind of business carried on by the partnership, or to become a partner with unlimited liability in another partnership carrying on the same kind of business.

If a partner in contravention of the foregoing provisions undertakes a commercial transaction for his own account, the other partners may by a majority vote decide that such transaction is to be considered as done on account of the partnership.

This right ceases if it is not exercised for two weeks from the time when one of the other partners had notice of such transaction, or if a year has elapsed since the time of transaction.

### SECTION III.

#### THE EXTERNAL RELATIONS OF THE PARTNERSHIP.

61.

Unless particular partners have been designated by the partnership contract or by the consent of all partners to represent the partnership, it is represented by each partner.

62.

The partners entitled to represent are authorized to do all acts in or out of court relating to the business of the partnership.

The provisions of Arts. 44, 1 and 54 of the Civil Code apply correspondingly to ordinary partnerships.

63.

So far as the partnership's obligations cannot be wholly satisfied out of the partnership property, each partner is jointly and severally liable for their performance.

64.

A partner admitted to the partnership after its formation is liable also on all obligations incurred by the partnership before his admittance.

65.

If a person who is not a partner does an act which is calculated to produce the belief that he is a partner, he is liable as such to third persons acting in good faith.

66.

A withdrawal of any part of the contribution of a partner cannot be set up against a creditor\* of the partnership; except in case the withdrawal is not objected to by the creditor within two years from the time when it is registered at the principal office.

67.

The partnership must not distribute any profits, until all losses have been made good.

If profits are distributed in contravention of this provision, the creditors of the partnership may demand that the amount so distributed be refunded.

---

## SECTION IV.

### TERMINATION OF A PARTNER'S MEMBERSHIP.

68.

If the duration of the partnership is not fixed by the partnership contract, or if its duration is fixed for the life time of a partner, any partner may withdraw at the end of any business year on giving at least six months' notice.

Irrespective of whether the duration of the partnership has been fixed or not, a partner may at any time withdraw from the partnership, if an unavoidable necessity exists for doing so.

---

\* Creditor is used in the Roman meaning of the word to denote any person who has a lawful claim against the partnership. See note to Art. 400 of my translation of the Civil Code.

69.

In addition to the cases mentioned in Art. 68, a partner's membership is terminated :—

1. By any cause specified in the partnership contract ;
2. By the consent of all the partners ;
3. By his death ;
4. By his bankruptcy ;
5. By his being adjudged incompetent ;
6. By his expulsion.

70.

The expulsion of a partner can take place only in the following cases and by unanimous resolution of the other partners :—

1. If he is not able to make his contribution, or if he does not make it within a reasonable time after being notified to do so ;
2. If he acts contrary to the provisions of Art. 60, 1 ;
3. If he commits a dishonest act towards the partnership in the management of its affairs or in representing it ;
4. If without being entitled to do so, he interferes with the management of the affairs of the partnership ;
5. If in any other respect he neglects to perform an essential duty incumbent upon him as a partner.

The expulsion can be set up against the partner only after notice thereof has been given to him.

71.

When the membership of a partner terminates, he is entitled to repayment of his interest, even though his

contribution consisted in personal services or credit, unless it be otherwise determined by the partnership contract.

72.

If the family name or full name of a partner whose membership has terminated is used in the trade name, he is entitled to demand the discontinuance of such use.

73.

A partner whose membership has terminated continues liable on all the obligations of the partnership incurred before the termination of his membership has been registered at the place of the principal office. This liability is extinguished by prescription after two years from the time of such registration.

These provisions apply correspondingly to a partner who has assigned his interest in the partnership with the assent of the other partners.

---

SECTION V.

DISSOLUTION.

74.

A partnership is dissolved :—

1. By the expiration of the time for which it was formed, or by any cause specified in the partnership contract ;
2. If the business forming the object of the part-

nership has been completely accomplished, or its accomplishment is impossible ;

3. By the consent of all the partners ;
4. By consolidation ;
5. If only one partner remains ;
6. By the bankruptcy of the partnership ;
7. By order of the court.

75.

In the case specified in Art. 74, No. 1 the partnership may be continued by the consent of all or of a part of the partners. As to such partners as do not consent, it is deemed that their membership has terminated.

76.

Except in the case of consolidation or bankruptcy, the dissolution of a partnership must be registered at the place of the principal and of each branch office within two weeks.

77.

Consolidation can be effected by the consent of all the partners.

78.

When the partnership has passed a resolution for consolidation, it must within two weeks from the day of such resolution make an inventory and a balance-sheet.

The partnership must within the aforesaid period issue a public notice to all the creditors of the partnership to present their objections, if they have any, within a fixed time, and to all creditors known to the partnership a special notice must be given. The time fixed must not be less than two months.

79.

A creditor who does not present any objection within the time fixed in Art. 78, 2 is deemed to consent to the consolidation.

If a creditor presents an objection, consolidation can take place only after the partnership has made performance to him or given him proper security.

A consolidation made in contravention to this provision cannot be set up against any creditor by whom objection has been made.

80.

A consolidation which has been made without a public notice as prescribed in Art. 78, 2 having been issued, cannot be set up against the creditors of the partnership.

If a special notice has not been given to a creditor known to the partnership, the consolidation cannot be set up against such creditor.

81.

When consolidation has been effected, there must be made in the place of the principal office and of each branch office within two weeks a registration of the alteration in respect to the partnership which continues in existence after the consolidation, a registration of the dissolution in respect to the partnership which is extinguished by the consolidation, and a registration as prescribed in Art. 51, 1 in respect to the partnership which is created by the consolidation.

82.

The partnership continuing after the consolidation

or created by it, succeeds to the rights and duties of the partnership which has been extinguished by the consolidation.

83.

Any partner may apply to the court for the dissolution of the partnership, if an unavoidable necessity exists for it. The court, however, may in such case on the application of a partner order in lieu of dissolution the expulsion of individual partners.

---

SECTION VI.

LIQUIDATION.

84.

Even after dissolution a partnership is deemed to continue in existence so far as necessary for the purposes of liquidation.

85.

The manner of disposing of the property of a dissolved partnership may be determined by the partnership contract or by the consent of all the partners. In such case an inventory and a balance-sheet must be made within two weeks from the day of dissolution.

In the foregoing case the provisions of Arts. 78, 2, 79 and 80 apply correspondingly.

86.

If the manner of disposing of the property of the partnership is not determined in the way provided



in the preceding article, liquidation, except in the case of consolidation or bankruptcy, must take place in compliance with the provisions of the following thirteen articles.

87.

Liquidation is carried on by all the partners or by persons appointed by them.

The appointment of liquidators is decided by a majority vote of the partners.

88.

In the case mentioned in Article 74, No. 5 the liquidators are appointed by the court on the application of any person interested.

89.

If the dissolution of the partnership has taken place by order of the court, liquidators are appointed by the court on the application of any person interested or of the public procurator.

90.

When liquidators have been appointed, they must register their names and domiciles at the place of the principal and of each branch office within two weeks.

91.

The duties of the liquidators are as follows :—

1. To wind up the pending business ;
2. To collect obligations existing in its favour and perform obligations due from it ;
3. To distribute its remaining property.

The liquidators have power to do all acts in and out of court necessary for the performance of their duties.

Any restriction upon the powers of representation of the liquidators cannot be set up against third persons acting in good faith.

The provisions of Art. 81 of the Civil Code apply correspondingly in the case of the liquidation of ordinary partnerships.

92.

When the presently available property of the partnership is insufficient to fully meet its obligations, the liquidators may require the partners to make their contributions irrespective of the time of maturity.

93.

If there is more than one liquidator, all acts connected with the liquidation must be decided upon by a majority vote. As to third persons, however, the partnership is represented by each individual liquidator.

94.

As soon as the liquidators have assumed their functions, they must examine the actual condition of the partnership property, make an inventory and a balance-sheet and communicate them to the partners.

If requested by the partners, the liquidators must make a monthly report as to the state of the liquidation.

95.

The liquidators can distribute the partnership pro-

perty among the partners only after all the obligations of the partnership have been performed.

96.

Liquidators who have been appointed by the partners may be removed at any time. The removal must be decided by a majority vote of the partners.

For an important cause, the court may remove a liquidator upon the application of any person interested.

97.

A removal or change of a liquidator must be registered at the place of the principal and of each branch office within two weeks.

98.

When the functions of the liquidators come to an end, they must without delay render an account and submit it for approval to each partner.

If a partner does not object to the account within one month, he is deemed to have approved it. This, however, does not apply, so far as the liquidators have acted in a dishonest way.

99.

At the end of the liquidation the liquidators must register that fact without delay at the place of the principal and of each branch office.

100.

When the formation of a partnership is rescinded after it has already commenced business, liquidation

must take place as in the case of dissolution. In such case liquidators are appointed by the court on the application of any person interested.

101.

The books of the partnership, all its business correspondence and all papers relating to the liquidation must be preserved for a period of ten years, which period is computed in the case mentioned in Art. 85 from the time when the dissolution, in other cases from the time when the ending of the liquidation is registered at the place of the principal office. The custodian is appointed by a majority vote of the partners.

102.

If a partner dies leaving several heirs, they must appoint one person for the exercising of the rights of the partner relating to the liquidation.

103.

The liability of the partners specified in Art. 63 is extinguished after five years from the registration of the dissolution of the partnership at the place of the principal office. Even after the aforementioned period, the creditors of the partnership may demand performance out of partnership property which yet has remained undistributed.

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### CHAPTER III.

#### LIMITED PARTNERSHIPS.\*

##### 104.

A limited partnership consists of one or more partners with limited liability and one or more partners with unlimited liability.

##### 105.

Except as otherwise provided in this chapter, the provisions relating to ordinary partnerships apply correspondingly to limited partnerships.

##### 106.

The partnership contract of a limited partnership must in addition to the particulars specified in Art. 50 contain a statement of whether the liability of each partner is limited or unlimited.

##### 107

A limited partnership must within two weeks from the time of the making of the partnership contract register, at the place of the principal office and of each branch office, in addition to the particulars specified in Art. 51, 1, a statement of whether the liability of each partner is limited or unlimited.

##### 108.

The contribution of a partner with limited liability can be only in money or other property.

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\* Gōshikwaisha, 合資會社.

Unless the partnership contract contains a different provision, each partner with unlimited liability has the right, and it is his duty, to manage the affairs of the partnership.

If there are two or more partners with unlimited liability, the management of the affairs of the partnership is decided by a majority vote.

110.

The appointment and the dismissal of a procurator must be decided by a majority vote of the partners with unlimited liability, even though special managing partners have been appointed.

111.

A partner with limited liability may at the end of a business year during business hours inspect the inventory and the balance-sheet, and inquire into the affairs of the partnership and the state of the partnership property.

For any important cause the court may upon the application of a partner with limited liability empower him to inquire at any time into the affairs of the partnership and the state of the partnership property.

112.

With the assent of all the partners with unlimited liability, a partner with limited liability may dispose of the whole or a part of his interest in the partnership.

113.

A partner with limited liability may on his own

account as well as on that of a third person undertake commercial transactions falling under the kind of business carried on by the partnership, or he may become a member with unlimited liability in another commercial company carrying on the same kind of business.

114.

Unless the representation of the partnership is committed by the partnership contract or by the consent of all the partners to particular partners with unlimited liability, each of the partners with unlimited liability is entitled to represent it.

115.

A partner with limited liability is not entitled to manage the affairs of the partnership or to represent it.

116.

If a partner with limited liability does an act calculated to produce the belief that he is a partner with unlimited liability, he is liable as such to third persons acting in good faith.

117.

If a partner with limited liability dies, his heir becomes partner in his place.

If a partner with limited liability is adjudged incompetent, his membership does not terminate thereby.

118.

A limited partnership is dissolved, if the membership of all the partners with unlimited liability or of all the partners with limited liability is terminated.

In the latter case, however, the partner with unlimited liability may by a unanimous resolution determine that the partnership shall be continued as an ordinary partnership.

In the case of the aforesaid proviso there must be made at the place of the principal office and of each branch office within two weeks a registration of dissolution in respect to the limited partnership, and the registration as prescribed in Art. 51, 1 in respect to the ordinary partnership.

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## CHAPTER IV.

### JOINT STOCK COMPANIES.\*

#### SECTION I.

##### FORMATION.

###### 119.

For the formation of a joint stock company at least seven promoters are required.

###### 120.

The promoters must make and sign a company contract, which must contain:—

1. The object for which the company is formed ;
2. Its trade name ;
3. The total amount of its capital ;
4. The amount of each share ;
5. The number of shares which the directors must hold ;

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\* Kabushikikwaisha. 株式會社



6. The place of the principal and of each branch office ;
7. The manner in which the public notifications of the company are to be made ;
8. The names and domiciles of the promoters.

121.

If the particulars mentioned in Art. 120, Nos. 5-7 are not inserted in the company contract, such omission may be supplied at the general meeting for organization or at a general meeting of the shareholders.

The resolution of the general meeting of shareholders above mentioned must be made in compliance with the provisions of Art. 209.

122.

In case any determination is made as to the following particulars, it is valid only if inserted in the company contract, namely :—

1. The time of the duration of the company or the causes for its dissolution ;
2. The issue of shares higher than the face value ;
3. Any special benefits to be granted to promoters, and the names of such persons ;
4. The names of those persons whose contributions consist in property other than money, the nature and value of such property and the number of shares given in exchange ;
5. Any expenses of formation to be borne by the company, and the amount of any compensation to be given to the promoters.

123.

If all the shares have been taken by the promoters,

the company comes into existence thereby. In such case the promoters must without delay make the first payment, which shall not be less than one quarter of the whole amount to be paid in, and must appoint the directors and inspectors. Such appointment is determined upon by a vote of the majority in value of the promoters.

124.

After the directors have been appointed, they must without delay make an application to the court for the appointment of examiners, in order that the latter may inquire into the matters mentioned in Art. 122, Nos. 3-5, and whether the first payment has been made.

The court on hearing the report of the examiners may make any proper disposition, following correspondingly the provisions of Art. 135.

125.

If the promoters do not take all the shares, they must invite subscriptions for them.

126.

A person who intends to subscribe for shares must insert in two copies of the instrument of subscription the number of shares to be taken by him, and must add his signature.

Instruments of subscription are to be made up by the promoters, and shall contain the following particulars:—

1. The date of the making of the company contract ;
2. The particulars specified in Arts. 120 and 122 ;

3. The number of shares taken by each promoter;

4. The amount of the first payment.

If shares are issued at a value higher than the face value, the value for which shares are taken is to be inserted by the subscriber in the instrument of subscription.

127.

A person who has subscribed for shares is bound to make payment in accordance with the number of shares to be taken by him.

128.

The value for which the shares are issued must not be less than the face value.

The amount of the first payment must not be less than one quarter of the whole amount to be paid in.

129.

When all the shares have been taken, the promoters shall without delay cause the first payment to be made upon each share.

When shares are issued at a value higher than the face value, the excess amount must be paid together with the first payment.

130.

If a person who has taken shares does not make the payment provided for in Art. 129, the promoters may notify him that he must pay within a fixed time, which must not be less than two weeks, and that he will lose his rights, if he does not pay within that time.

If such person does not pay after having received

such notification, he loses his right, and the promoters may again invite subscriptions for the shares taken by him.

By these provisions the right of claiming damages against the person who has taken shares is not affected.

131.

When payment upon all the shares as provided in Art. 129 has been made, the promoters shall without delay call the general meeting for organization.

In that meeting all resolutions must be passed by a vote of the majority in value of those present, who must be at least half in number and value of the persons who have taken shares.

The provisions of Arts. 156, 1 and 2, 161, 3 and 4, 162 and 163, 1 and 2 apply correspondingly to the general meeting for organization.

132.

The promoters must make a report to the general meeting for organization on all facts relating to the organization of the company.

133.

In the general meeting for organization directors and inspectors must be appointed.

134.

Directors and inspectors must inquire into the following particulars, and report thereon to the general meeting for organization, namely :—

1. Whether the whole number of shares have been taken ;

2. Whether on each share the payment provided for in Art. 129 has been made ;
3. Whether the matters specified in Art. 122, Nos. 3-5 are proper.

If directors or inspectors have been appointed from among the promoters, the general meeting for organization may appoint special examiners to inquire into and report upon the matters above mentioned in place of the said directors and inspectors.

135.

If it appears in the general meeting for organization that the matters specified in Art. 122, Nos. 3-5 are not proper, they may be altered ; but if in the case of a person whose contribution is to be made in property other than money, the number of the shares to be granted therefor is diminished, he may make payment in money.

136.

If there are shares which have not been taken, or upon which the payment provided for in Art. 129 has not been fully made, the promoters are jointly and severally bound to take such shares or to make such payment. The same applies, if subscriptions for shares are rescinded.

137.

The provisions of the preceding two articles do not affect the right of claiming damages against the promoters.

138.

In the general meeting for organization a resolution

may be passed to alter the company contract or to abandon the formation of the company.

139.

In the case where the promoters have not taken all the shares, the company comes into existence upon the ending of the general meeting for organization.

140.

If the payment provided for in Art. 129 is not completely made within one year after all the shares have been taken, or if the promoters do not call the general meeting for organization within six months after such payments have been completely made, any person who has taken shares may rescind his subscription and demand that any amount already paid by him be refunded.

141.

A company must register within two weeks in the place of its principal and of each branch office the following particulars :—

1. The facts specified in Art. 120, Nos. 1-4 and 7 ;
2. The principal and each branch office ;
3. The date of the formation of the company ;
4. If the term of duration of the company or causes for its dissolution are fixed, such term or causes ;
5. The amount paid upon each share ;
6. If it has been determined that interest shall be paid before the commencement of business, the rate of interest ;
7. The names and domiciles of the directors and inspectors.

The period of two weeks above mentioned begins, in case the promoters have taken all the shares, from the day when the examination provided for in Art. 124 is finished, and in case the promoters have not taken all the shares, from the day when the general meeting for organization is ended.

The provisions of Arts. 51, 2 and 3, 52 and 53 apply correspondingly to joint stock companies.

142.

After registration as provided in Art. 141, 1 has been made at the place of the principal office, a person who has taken shares can no longer rescind his subscription on the ground of fraud or coercion.

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## SECTION II.

### SHARES.

143.

The capital of a joint stock company must be divided into shares.

144.

The liability of a shareholder is limited to the amount of shares taken or acquired by him.

A shareholder cannot avail himself of a set off against the company as to payments on shares.

145.

The amount in money of all the shares must be equal. The amount of a share cannot be less than fifty yen,

except that where the whole amount is to be paid up at one time, the amount of a share may be reduced to not less than twenty yen.

146.

If a share is held by two or more persons in common, they must appoint one person to exercise their rights as shareholders.

Persons holding a share in common are jointly and severally liable to the company for the payment of the amount of the share.

147.

Certificates of shares cannot be issued before registration according to the provisions of Art. 141, 1 has been made at the place of the principal office.

Certificates issued in contravention of this provision are invalid ; but this does not affect the right to claim damages against the persons who have issued such certificates.

148.

Each certificate must be signed by the directors, bear a number, and contain the following particulars :—

1. The trade name of the company ;
2. The date when registration according to the provisions of Art. 141, 1 has been made at the place of the principal office ;
3. The total amount of the capital ;
4. The amount of each share.

Unless the whole amount of the shares is to be paid up at one time, the amount of each payment made



upon the shares must be inserted in the certificate at the time of the payment.

149.

Unless it is otherwise provided by the company contract, a share may be assigned to another person without the assent of the company. Such assignment or a provisional agreement for an assignment, however, cannot be made until registration according to the provisions of Art. 141, 1 has been made at the place of the principal office.

150.

The assignment of a name-share\* cannot be set up against the company or any other third person, unless the name and domicile of the assignee have been entered in the list of shareholders, and his name has also been inserted in the certificate.

151.

A company cannot acquire its own shares or take them in pledge.

An amortization of shares can only be made according to the provisions of law as to the reduction of the capital. This, however, does not apply, where pursuant to a provision of the company contract such amortization is made from the profits which might have been distributed among the shareholders.

152.

Notice of a call on the shares must be given to each shareholder at least two weeks beforehand.

If a shareholder does not make payment by the day

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\* A name-share is one whose holder is named in the certificate.

fixed, the company may again notify such shareholder that payment must be made within a fixed time, which must not be less than two weeks, and that otherwise his right as shareholder will be forfeited.

153.

If a shareholder fails to pay a call even after the company has taken the proceedings mentioned in Art. 152, his rights are forfeited.

In such case the company shall notify all the assignors of the share to pay within a fixed time, which must not be less than two weeks. The assignor who first pays the amount in arrear acquires the share.

If no assignor pays, the share must be publicly sold by the company. If the amount realized by such sale is not sufficient to cover the amount in arrear, the original holder of the share may be required to pay the deficit. If he does not perform within two weeks, the company may demand performance of any of the assignors.

The provisions of the last three paragraphs do not affect the right of the company to claim damages and any penalty specially provided for in the company contract.

154.

The liability of any assignor mentioned in the preceding article is extinguished after two years have elapsed since the time when the assignment was entered in the list of shareholders.

155.

When the whole amount of the share has been paid up, a shareholder may require his certificate to be made out to bearer.

A shareholder may at any time have a share to bearer changed into a name-share.

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### SECTION III.

#### ORGANIZATION OF THE JOINT STOCK COMPANY.

#### SUBSECTION I.

##### THE GENERAL MEETING OF SHAREHOLDERS.

##### 156.

Notice of a general meeting must be given to each shareholder two weeks before the date fixed for such meeting.

The notice must state the object of the meeting and the matters to be voted upon.

If the company has issued shares to bearer, a public notification of the general meeting and of the particulars specified in the preceding paragraph must be given three weeks before the date fixed for the meeting.

##### 157.

An ordinary general meeting must be called by the directors once a year at a fixed time.

In the case of a company in which distribution of profits takes place twice a year or oftener, a general meeting must be called at the time of each distribution.

158.

The ordinary general meeting examines the documents submitted to it by the directors and the reports of the inspectors, and passes resolutions as to the distribution of profits or interest.

The general meeting may appoint special examiners to examine into the correctness of the documents above mentioned.

159.

An extraordinary general meeting may be called by the directors, whenever there is a necessity for doing so.

160.

The holders of at least one tenth of the capital may require the directors to call an extraordinary general meeting. The request must be in writing, and must specify the object of the meeting and the reasons for its convening.

If the directors do not proceed to call the general meeting within two weeks after such request has been made, the shareholders who made the request may call the meeting with the permission of the court.

161.

Except as otherwise provided by this Code or by the company contract, a resolution of the general meeting must be passed by a vote of the majority in value of the shareholders present.

Persons holding certificates to bearer cannot exercise their right of voting unless they have deposited their certificates with the company one week before the day of the meeting.

A shareholder may exercise his right of voting by a proxy, who must produce to the company a document proving his right of representation.

A person who has a special interest in a resolution of the company, cannot exercise the right of voting.

162.

A shareholder has one vote for each share. The company contract may, however, restrict the voting powers of a person holding eleven shares or more.

163.

If the procedure for convening a general meeting or the manner in which resolutions are passed, is contrary to law or regulations or to the company contract, the shareholders may apply to the court for a decree of invalidity of the resolutions.

Such application must be made within one month from the day of the passage of the resolution.

If a shareholder who is not a director or inspector makes such application, he must deposit his certificates, and upon demand of the company he must give proper security.

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## SUBSECTION II.

### DIRECTORS.

164.

Directors are elected in a general meeting of shareholders from among the shareholders.

165.

The directors must be at least three in number.

166.

The duration of the office of a director must not exceed three years ; but he may be re-elected after the expiration of such period.

167.

A director may be removed at any time by a resolution passed in a general meeting of the shareholders. But if a director who is appointed for a certain period, is without reasonable cause removed before the expiration of such period, he may claim as against the company such damages as may have accrued to him thereby.

168.

The directors must deposit with the inspectors such number of share certificates as may have been provided by the company contract.

169.

for by the company contract.

If not otherwise provided for by the company contract, the management of the company's affairs and the appointment or removal of procurators are to be decided by a majority vote of the directors.

170.

Each of the directors is entitled to represent the company.

The provisions of Art. 62 apply correspondingly to the directors.

171.

The directors must keep at the principal and at each branch office the company contract and the records of the resolutions passed at the general meetings, and at the principal office the list of shareholders and the debenture list.

Any shareholder or any creditor of the company may at any time during business hours demand an inspection of the above mentioned documents.

172.

In the list of shareholders the following particulars must be entered:—

1. The name and domicile of the shareholders ;
2. The number of shares held by each shareholder and the serial numbers of the certificates ;
3. The amount paid upon each share and the date of the payment ;
4. The date of the acquisition of each share ;
5. If certificates of shares to bearer have been issued, their total number, their serial numbers and the date of their issue.

173.

In the debenture list the following particulars must be entered :

1. The name and domicile of the creditors ;
2. The serial numbers of the debentures ;
3. The total amount of the debentures ;
4. The amount in money of each debenture ;
5. The rate of interest on the debentures ;
6. The manner and time of repayment of the debentures ;

7. The date of the issue of the debentures;
8. The date of the acquisition of each debenture;
9. If debentures to bearer have been issued, their total number, their serial numbers and the date of their issue.

174.

If a company has lost half the amount of its capital, the directors must without delay call a general meeting of shareholders and inform it thereof.

If the property of the company is no longer sufficient to fully meet its obligations, the directors must at once apply to the court to have the company adjudged bankrupt.

175.

A director must not without the consent of a general meeting of shareholders undertake commercial transactions in the same kind of business as that of the company, either on his own account or that of a third person, nor may he be a partner with unlimited liability in another commercial company carrying on the same kind of business as the company.

If a director, in contravention of these provisions, undertakes a commercial transaction for his own account, the general meeting of shareholders may consider such transaction as done on account of the company.

This right ceases if not exercised within two months from the time when one of the inspectors had notice of such transaction, or if a year has elapsed since the time of the transaction.



176.

For doing business with the company either on his own account or that of a third person, a director must have the consent of the inspectors.

177.

A director who does an act contrary to law or regulations or to the company contract is not exempted from liability for damages therefor to third persons, even though he has done so in compliance with a resolution of a general meeting of shareholders.

These provisions do not apply to a director who in the general meeting has opposed such act and has given notice thereof to the inspectors.

178.

If a general meeting of shareholders passes a resolution to bring a suit against the directors, or if in case it passes a resolution not to bring such a suit, shareholders holding not less than one tenth of the capital require of the inspectors that such a suit be brought, the company must bring the suit within one month from the day of the resolution or the request.

Shareholders who have made such a request are bound to deposit their share certificates and upon the demand of the inspectors to give proper security.

If the suit fails, such shareholders are liable for damages to the company only.

179.

If the amount of the salary to be paid to the directors is not fixed by the company contract, it is fixed

by a resolution passed at a general meeting of shareholders.

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### SUBSECTION III.

#### INSPECTORS.

##### 180.

The duration of the function of an inspector is one year, but he may be re-elected after such time has elapsed.

##### 181.

Inspectors may at any time require the directors to give them information about the business, or may inquire into the affairs of the company and the state of its property.

##### 182.

Inspectors may call a general meeting of shareholders, whenever they consider such a measure necessary. Such general meeting may appoint special examiners to inquire into the affairs of the company and the state of its property.

##### 183.

It is the duty of the inspectors to examine the papers which are to be submitted to a general meeting of shareholders by the directors and to make a report thereon to the meeting.

184.

An inspector cannot at the same time be a director or procurator. If, however, there is a vacancy in the board of directors, some one from among the inspectors may be nominated by a resolution of the directors and inspectors to discharge temporarily the duties of a director.

Such an inspector cannot discharge the duties of an inspector, until the approval of a general meeting of shareholders according to Art. 192, 1 has been given.

185.

In case the company brings a suit against the directors or the latter against the former, the company is in regard to such suit represented by the inspectors. The general meeting of shareholders, however, may appoint another person as representative.

When a request to bring a suit against the directors is made by shareholders holding not less than one tenth of the capital, they are entitled to nominate a special representative.

186.

An inspector is liable to the company and to third persons for any damage caused by his having neglected his duties.

187.

If a general meeting of shareholders passes a resolution to bring a suit against the inspectors, or if in case it passes a resolution not to bring such a suit, shareholders holding not less than one tenth of the

capital require of the directors that such a suit be brought, the company must bring the suit within one month from the day of the resolution or the request. In such case the proviso of Art. 185, 1 and the provisions of Art. 185, 2 apply correspondingly.

Shareholders who have made such a request are bound to deposit their share certificates and upon the demand of the directors to give proper security.

If the suit fails, such shareholders are liable for damages to the company only.

188.

The office of an inspector is vacated by his bankruptcy or by his being adjudged incompetent.\*

189.

The provisions of Arts. 164, 167 and 179 apply correspondingly to inspectors.

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## SECTION IV.

### ACCOUNTS OF THE COMPANY.

190.

The directors must submit to the inspectors the following documents one week before the day of an ordinary general meeting, namely:—

1. An inventory ;
2. A balance-sheet ;
3. A report on the company's business ;
4. An account of profits and losses ;

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\* See Art. 7 of the Civil Code.

5. Proposals relating to the reserve fund and to the distribution of profits and interest.

191.

The directors must deposit before the day of an ordinary general meeting at the principal office the documents mentioned in the preceding article and the report of the inspectors.

Shareholders and creditors of the company may at any time during business hours demand an inspection of the documents above mentioned.

192.

The directors must submit to the ordinary general meeting the documents mentioned in Art. 190 for approval.

After such approval has been given, the balance-sheet must be published by the directors.

193.

When the approval mentioned in Art. 192, 1 has been given by the ordinary general meeting, the company is deemed to have absolved the directors and inspectors from responsibility. This does not, however, apply so far as directors or inspectors have acted in a dishonest manner.

194.

The company must appropriate at each distribution of profits at least one twentieth of such profits to a reserve fund, until the latter amounts to one fourth of the capital.

If shares have been issued at a value higher than the face value, the amount exceeding the face value must be

added to the reserve fund, until the latter has reached the above mentioned amount.

195.

A company may distribute profits only after all losses have been made good, and the amount for the reserve fund prescribed in Art. 194, 1 has been set aside.

If a distribution has been made in contravention of the foregoing provisions, the creditors of the company may demand that the amount so distributed be refunded.

196.

If it appears that, according to the nature of the business for the carrying on of which the company is formed, operations cannot be commenced within two years or longer from the day when the registration provided for in Art. 141, 1 has been made at the place of the principal office, it may be provided in the company contract that a fixed interest shall be paid to the shareholders until the commencement of the business operations; but the rate of such interest shall not exceed the legal rate of interest.

For such provision the permission of the court must be obtained.

197.

All distributions of profits or interest shall be made in proportion to the amount paid in upon the shares according to the company contract. This, however, does not apply so far as there are different provisions in regard to preference shares issued by the company.

198.

The court may upon the application of shareholders representing not less than one tenth of the capital appoint examiners to inquire into the affairs of the company and the state of its property.

The examiners must report to the court the result of their examination. In such case the court may, if such measure is deemed necessary, order the inspectors to call a general meeting of shareholders.

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## SECTION V.

### DEBENTURES.

199.

Subscriptions for debentures may be invited only pursuant to a resolution as provided in Art. 209.

200.

The total amount of debentures issued must not exceed the amount paid in upon the shares.

If the actual property of the company as shown by the last balance-sheet is less than the amount above mentioned, the total amount of debentures must not exceed the amount of such property.

201.

The amount of each debenture must not be less than twenty yen.

202.

If it is provided that the amounts to be paid back to the debenture holders shall exceed the face value of

the debentures, such excess must be the same for all debentures.

203.

When subscriptions for debentures are to be invited, the directors must publish the following particulars:—

1. The particulars mentioned in Art. 173, Nos. 3—6;
2. The trade name of the company;
3. If debentures have been previously subscribed for, the total amount not yet paid back;
4. The amount for which the debentures are to be issued, or the lowest amount;
5. The capital of the company and the total amount paid in on the shares;
6. The amount of the actual property of the company, as shown by the last balance-sheet.

204.

When the subscriptions for debentures are completed, the directors must call for the payment of the whole amount of each debenture.

The directors must register at the place of the principal and of each branch office the particulars specified in Art. 173, Nos. 3—6 within two weeks from the day when they received payment of the full amount in accordance with the provisions of the foregoing paragraph.

205.

In each debenture must be inserted the particulars specified in Art. 203, Nos. 1 and 2, and its serial number and it must be signed by the directors.



206.

The assignment of a name-debenture\* cannot be set up against the company or against any other third person, unless the name and domicile of the assignee have been entered in the debenture list and his name inserted in the debenture.

207.

The provisions of Art. 155 apply correspondingly to debentures.

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## SECTION VI.

### ALTERATIONS OF THE COMPANY CONTRACT.

208.

An alteration of the company contract can be made only by a resolution passed at a general meeting of shareholders.

209.

A resolution to alter the company contract must be passed by a vote of a majority in value of those present, who must be at least one half in number and value of all the shareholders.

If the quorum required by the preceding paragraph is not present, those present may pass a provisional resolution by vote of a majority in value. The contents of such resolution must be communicated to each

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\* See note to Art. 150.

shareholder, and, if certificates to bearer are issued, must be published, and another general meeting of shareholders must be called within a period of not less than one month.

The second meeting of shareholders shall decide by a vote of a majority in value of those present whether the provisional resolution shall be adhered to or not.

The provisions of the last two paragraphs do not apply to an alteration of the business for the carrying on of which the company is formed.

210.

The capital of a company can be increased only after the total amount has been paid in upon the shares.

211.

A company may issue preference shares only in case the capital is to be increased. Such fact must be entered in the company contract.

212.

If preference shares have been issued, it is necessary for any alteration of the company contract by which the preference shareholders might be prejudiced, that the resolution to make such alteration be passed not only by a general meeting of shareholders, but also by a general meeting of the preference shareholders.

All provisions as to general meetings of shareholders apply correspondingly to general meetings of the preference shareholders.

213.

When in the case of an increase of the capital the payment provided for in Art. 129 has been made on all

the new shares, the directors must without delay call a general meeting of shareholders and must communicate to it all the facts relating to the subscriptions for new shares.

214.

The inspectors must inquire into the following particulars and report thereon to the general meeting of shareholders, namely:—

1. Whether the whole number of new shares has been taken ;
2. Whether the payment provided for in Art. 129 has been made upon each new share ;
3. If any person is to contribute property other than money, whether the number of shares given in exchange for such property is proper.

The general meeting of shareholders may appoint special examiners in order to inquire into and report upon the above mentioned facts.

215.

If the general meeting of shareholders finds that the number of shares given in exchange for property other than money is improper, it may reduce them ; in which case the proviso of Art. 135 applies correspondingly.

216.

If there are shares not yet taken, or if the payment provided for in Art. 129 has not been fully made, the directors are jointly and severally bound to take such shares or to make such payment. The same applies, if a subscription for shares has been rescinded.

217.

The company must register the following particulars

at the place of the principal and of each branch office within two weeks from the day of the ending of the general meeting of shareholders convened in accordance with the provisions of Art. 213 namely:—

1. The whole amount of the capital increased;
2. The date of the resolution to increase the capital;
3. The amount paid in upon each new share;
4. If preference shares have been issued, the rights of their holders.

Until registration in accordance with the foregoing provisions has been made at the place of the principal office, no certificate for the new shares may be issued, and no assignment of them or provisional agreement for assignment may be made.

218.

When new shares are issued, the date of the registration made at the place of the principal office in accordance with the provisions of Art. 217, 1, must be inserted in the share certificates.

If preference shares are issued, the rights of their holders must be stated in the share certificates.

219.

The provisions of Arts. 127—130, 140, 142 and 147, 2 apply correspondingly in the case of the issue of new shares.

220.

If a resolution is passed at a general meeting of shareholders to reduce the capital, the manner of such reduction shall be determined at the same time.

The provisions of Arts. 78—80 apply correspondingly to the case of a reduction of the capital.

## SECTION VII.

### DISSOLUTION.

#### 221.

A company is dissolved :—

1. In the cases specified in Art. 74, Nos. 1, 2, 4, 6 and 7 ;
2. By a resolution passed at a general meeting of shareholders ;
3. When the number of shareholders is reduced to less than seven.

#### 222.

The resolution mentioned in Art. 221, No. 2, and a resolution for consolidation must comply with the provisions specified in Art. 209.

#### 223.

When a company desires to consolidate with another, it may give public notice thereof and forbid the assignment of name-shares for a period of not more than one month before the day of commencement of the general meeting of shareholders and during such meeting.

After a resolution of consolidation has been passed by a general meeting, the shareholders cannot assign name-shares from the day of the resolution until registration according to the provisions of Art. 81 has been effected at the place of the principal office.

#### 224.

When a company is dissolved by a cause other than

bankruptcy, the directors must without delay give notice thereof to each shareholder, and if shares to bearer have been issued, public notice of the dissolution must be given.

225.

The provisions of Arts. 76 and 78—82 apply correspondingly to joint stock companies.

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## SECTION VIII.

### LIQUIDATION.

226.

Upon the dissolution of a joint stock company, except by consolidation and bankruptcy, the directors become liquidators, unless it is otherwise provided by the company contract, or other persons are appointed by the general meeting of shareholders.

If there are no persons to be liquidators under the preceding provisions, liquidators shall be appointed by the court upon the application of any person interested.

227.

The liquidators must without delay after they have entered upon their duties inquire into the present state of the property of the company, make an inventory and balance-sheet and submit them to a general meeting of shareholders for approval.

In such case the provisions of Arts. 158, 2 and 192, 2 apply correspondingly.

**228.**

Liquidators appointed by a general meeting of shareholders may at any time be removed by a resolution of a general meeting.

For any important cause the court may remove liquidators upon the application of the inspectors or of shareholders representing at least one tenth of the capital.

**229.**

The remaining property is to be distributed among the shareholders in proportion to the amounts paid in upon the shares in accordance with the company contract. This, however, does not apply so far as there exist different provisions in regard to preference shares issued by the company.

**230.**

Upon the completion of their duties the liquidators must without delay make a written account and submit it to the general meeting of shareholders for approval.

In such case the provisions of Arts. 158, 2, and 193 apply correspondingly.

**231.**

If the procedure for convening a general meeting or the manner in which resolutions are passed, is contrary to law or regulations or to the company contract, the liquidators must apply for a decree of invalidity of the resolutions.

232.

When after the commencement of business by the company it is discovered that its formation was invalid, liquidation shall take place as in the case of dissolution. In such case liquidators are appointed by the court upon the application of any person interested.

233.

The company's books, its business correspondence and all papers relating to the liquidation must be kept for a period of ten years from the time when the ending of the liquidation was registered at the place of the principal office. The custodian is to be appointed by the court upon the application of the liquidators or of any other person interested.

234.

The provisions of Arts. 84, 89-93, 95, 97, 99, 159, 160, 163, 176-178, 181, 183-185 and 187 of this Code, and Arts. 79 and 80 of the Civil Code apply correspondingly in the case of the liquidation of a joint stock company.

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## CHAPTER V.

### JOINT STOCK LIMITED PARTNERSHIPS.\*

235.

A joint stock limited partnership consists of partners with unlimited liability and shareholders.

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\* Kabushikigōshikwaisha, 株式合資會社.



236.

As to the following matters the provisions relating to limited partnerships apply correspondingly :—

1. The relations between partners with unlimited liability ;
2. The relations between partners with unlimited liability on the one hand and shareholders and third persons on the other ;
3. The termination of the membership of a partner with unlimited liability.

Except as to those matters the provisions relating to joint stock companies apply correspondingly to joint stock limited partnerships, unless otherwise provided in this chapter.

237.

The partners with unlimited liability acting as promoters must make and sign a company contract, which must contain the following particulars :—

1. The particulars mentioned in Art. 120, Nos. 1, 2, 4, 6 and 7 ;
2. The whole amount to be paid upon the shares ;
3. The name and domicile of each partner with unlimited liability ;
4. The nature and value or the manner of estimation of the contributions other than payments for shares to be made by the partners with unlimited liability.

238.

The partners with unlimited liability must invite subscriptions for the shares.

In the instruments of subscription the following particulars must be mentioned :—

1. Those specified in Arts. 122, 126, 2, Nos. 1 and 4, and in the preceding article ;
2. If partners with unlimited liability have taken shares, the number which each has taken.

239.

In the general meeting for organization inspectors must be appointed.

A partner with unlimited liability cannot be an inspector.

240.

Partners with unlimited liability are entitled to attend the general meeting for organization and express their opinions ; but even though they have taken shares, they cannot be included among the voters.

The shares taken by partners with unlimited liability and other contributions made by them cannot be taken into account in respect to the votes.

These provisions apply correspondingly to general meetings of shareholders.

241.

The inspectors must inquire into the matters specified in Arts. 134, 1 and 237, No. 4, and make a report thereon to the general meeting for organization.

242.

The company must register at the place of the principal and of each branch office the following particulars within two weeks from the day when the general meeting for organization is ended, namely :—

1. Those specified in Arts. 120, Nos. 1, 2, 4, and 7, and 141, 1, No. 2-6;
2. The whole amount to be paid upon the shares;
3. The names and domiciles of the partners with unlimited liability;
4. The nature of the contributions other than payments for shares to be made by the partners with unlimited liability, and the value of their contributions in property;
5. If the right to represent the company has been committed to particular partners with unlimited liability, the names of such partners;
6. The names and domiciles of the inspectors.

243.

The provisions as to directors of a joint stock company, excepting those of Arts. 164-168, 175 and 179 apply correspondingly to such partners with unlimited liability as are authorized to represent the company.

244.

In addition to a resolution of a general meeting of shareholders, the consent of all the partners with unlimited liability is required, where in the case of a limited partnership the consent of all the partners is necessary.

The provisions of Art. 209 apply correspondingly to the resolution above mentioned.

245.

The inspectors are bound to cause the partners with unlimited liability to carry into effect the resolutions passed by a general meeting of shareholders.

246.

Except in the case specified in Art. 83, a joint stock limited partnership is dissolved by the same causes as a limited partnership.

247.

If the membership of all the partners with unlimited liability terminates, the shareholders may by a resolution as specified in Art. 209 continue the company as a joint stock company. In such case resolutions must be passed as to all matters necessary to the organization of a joint stock company.

In the case of the preceding paragraph the provisions of Art. 118, 2 apply correspondingly.

248.

When a joint stock limited partnership is dissolved otherwise than by consolidation, bankruptcy or an order of the court, liquidation shall be conducted by all the partners with unlimited liability or by persons appointed by them, together with persons appointed by a general meeting of shareholders; unless it be otherwise provided by the company contract.

The appointment of liquidators by the partners with unlimited liability is effected by a majority vote.

The number of liquidators appointed by the general meeting of shareholders and the number of all the partners with unlimited liability or their heirs or of the persons appointed by them must be equal.

249.

The partners with unlimited liability may at any time remove the liquidators appointed by them.

The provisions of Art. 248, 2 apply correspondingly to the removal of liquidators.

250.

The provisions of Art. 102 apply correspondingly to the partners with unlimited liability of a joint stock limited partnership.

251.

In respect to the accounts provided in Arts. 227, 1 and 230, 1 the liquidators must in addition to the approval of the general meeting of shareholders obtain the approval of the partners with unlimited liability.

252.

A joint stock limited partnership may alter its organization into that of a joint stock company in compliance with the provisions of Art. 244.

253.

In the case mentioned in the preceding article the general meeting of shareholders must at once pass resolutions as to all the matters necessary for the organization of a joint stock company. In that general meeting the partners with unlimited liability are entitled to exercise the right of voting in proportion to the number of shares to be taken by them.

In such case the provisions of Arts. 78 and 79, 1 and 2 apply correspondingly.

254.

A joint stock limited partnership must within two weeks after it has obtained the approval of its creditors

for the alteration of its organization or after it has performed the duties specified in Art. 79, 2, make at the place of its principal and of each branch office, as to the joint stock limited partnership the registration of its dissolution, and as to the joint stock company the registration provided for in Art. 141, 1.

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## CHAPTER VI.

### FOREIGN COMMERCIAL COMPANIES.\*

#### 255.

A foreign commercial company which sets up a branch office in Japan must make the same registrations and public notifications as a commercial company of the same kind or of the kind most resembling it, existing in Japan.

In addition a foreign company which sets up a branch office in Japan must appoint a representative residing in Japan, and must register his name and domicile at the same time with the registration of the branch office.

The provisions of Art. 62 apply correspondingly to a representative of a foreign commercial company.

#### 256.

If a fact which is to be registered according to the provisions of Art. 255, 1 and 2 happens in a foreign country, the period for its registration shall be computed from the time when notice thereof arrives.

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\* See note to Art. 42.

257.

When a foreign commercial company first sets up a branch office in Japan, other persons need not recognize the existence of the company, until it has been registered at the place of such branch office.

258.

A commercial company which sets up a principal office in Japan or which makes it its principal object to do business in Japan, must, even though it is formed in a foreign country, comply with the same provisions as a company formed in Japan.

259.

The provisions of Arts. 147, 149, 150, 155, 1, 206, 207 and 217, 2 apply correspondingly to the issue of shares and to the assignment of shares or debentures of a foreign commercial company in Japan. In that case such branch office as is first set up in Japan is deemed to be the principal office.

260.

When a representative of a foreign commercial company which has set up a branch office in Japan commits as to the affairs of such company an act contrary to the public welfare or to good morals, the court may upon application of the public procurator or of its own motion order such branch office to be discontinued.

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## CHAPTER VII.

### PENAL PROVISIONS.

#### 261.

Promoters, partners managing the affairs of a commercial company, directors, representatives of foreign commercial companies, inspectors or liquidators are liable to a fine of from five yen to five hundred yen :—

1. If they fail to make any registration prescribed in this Book ;
2. If they fail to give any public notification or any notice prescribed in this Book ; or if they give a false public notification or notice ;
3. If they without just reason do not allow any inspection of the papers which they are bound to allow according to the provisions of this Book ;
4. If they obstruct any enquiry provided for in this Book ;
5. If they make preparations for commencing business in contravention of the provisions of Art. 46 ;
6. If in violation of the provisions of Arts. 126, 2 and 238, 2 they omit to make out instruments of subscription, or to insert therein particulars which should be inserted ; or if they make false statements therein ;
7. If they issue share certificates in contravention of the provisions of Art. 147, 1 or 217, 2 ;
8. If they omit to insert in share or debenture certificates any particulars which should be inserted, or if they make false statements therein ;



9. If they omit to keep at the principal or at a branch office the company contract, the list of shareholders, the debenture list, the records of the resolutions passed at general meetings, the inventories, the balance-sheets, the business reports, the accounts of profits and losses, or the proposals concerning the reserve fund and the distribution of profits or interest; or if they omit to insert therein particulars which should be inserted, or if they make false statements therein;
10. If in violation of the provisions of Arts. 174, 1 or 198, 2, they omit to call a general meeting of shareholders.

262.

Promoters, partners managing the affairs of a commercial company, directors, representatives of a foreign commercial company, inspectors or liquidators are liable to a fine of from ten yen to one thousand yen:—

1. If they make false statements to the public authorities or to a general meeting, or conceal facts from them;
2. If in contravention of the provisions of Arts. 78—80 they proceed with a consolidation, the disposal of the property of the commercial company, the reduction of its capital or an alteration of its organization;
3. If they obstruct any examination of the examiners;
4. If in violation of the provisions of Art. 151, 1, they acquire shares or take them on pledge, or if in contravention of Art. 151, 2, they amortize shares;

5. If in contravention of the provisions of Art. 155, 1, they issue share certificates to bearer ;
  6. If in violation of Art. 174, 2 of this Code or of Art. 81 of the Civil Code, they omit to apply for an adjudication in bankruptcy of the commercial company ;
  7. If in violation of the provisions of Art. 194 they omit to set aside a reserve fund, or if they make a distribution in contravention of the provisions of Arts. 195, 1 or 196 ;
  8. If they invite subscriptions for debentures in contravention of the provisions of Art. 200 ;
  9. If they act in contravention of an order of the court made according to the provisions of Art. 260 ;
  10. If they perform to a creditor within the period specified in Art. 79 of the Civil Code, or if in contravention of the provisions of Art. 95 of this Code they distribute property of the company .
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## BOOK III.

### COMMERCIAL TRANSACTIONS.

#### CHAPTER I.

##### GENERAL PROVISIONS.

263.

The following are commercial transactions :—

1. Transactions whose object is either the acquisition for value of movables, immovables or securities with the intention of disposing of them for profit, or the disposal of things thus acquired ;
2. Contracts for the delivery of movables or securities to be acquired from others, and transactions for acquiring such things for value in order to perform such contracts ;
3. Transactions on exchange ;
4. Transactions relating to bills\* and other commercial instruments of credit.

264.

The following are commercial transactions, if done as a regular business :—

1. Transactions whose object is either the acquisition for value or the hiring of movables or immovables with the intention of letting them, or the letting of things thus acquired or hired ;

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\* See Art. 43I.

2. Transactions relating to the manufacture or working up of things for other persons ;
3. Transactions relating to the supplying of electricity or gas ;
4. Transactions relating to carriage ;
5. Undertakings as to the execution of works or the furnishing of labours ;
6. Transactions relating to publishing, printing or photographing ;
7. Business of a place for entertaining guests ;
8. Money changing and other banking business ;
9. Insurance ;
10. Reception of deposits ; \*
11. Transactions relating to brokerage or intermediation ;
12. Assuming the representation of another in commercial transactions.

These provisions do not apply to transactions of persons who make things or render services merely for the purpose of earning wages.

265.

Transactions made by a trader for the purposes of his business are commercial transactions.

The transactions of a trader are presumed to be made for the purposes of his business.

266.

A commercial transaction is valid against the principal, even though his representative has not disclosed the fact that he is acting for him. If, however, the

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\* See Chapter IX.

other party did not know that the representative was acting for the principal, he is not prevented from claiming performance from the representative.

267.

A mandatary\* in a commercial transaction may do acts not specified in the mandate, if they are within its limits and not contrary to its terms.

268.

A right of representation founded upon a mandate for a commercial transaction is not put an end to by the death of the principal.

269.

*Inter praesentes* an offer to make a contract becomes inoperative, unless the offeree accepts it forthwith.

270.

As between parties at a distance an offer to make a contract in which no time for acceptance is fixed becomes inoperative, unless the offeree gives notice of acceptance within a reasonable time.

In such case the provisions of Art. 523 of the Civil Code apply correspondingly.

271.

If an offer to make a contract pertaining to the branch of business carried on by him is made to a trader by a person with whom he is in regular commercial connection, he must declare his acceptance or

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\* See Art. 643 *et seq.* of the Civil Code.

rejection of it without delay. If he fails to do so, he is deemed to have accepted it.

272.

If an offer is made to a trader to make a contract pertaining to the branch of business carried on by him, and together with such offer goods are forwarded to him, he must, even though he refuses to accept the offer provide for the safe keeping of the goods at the cost of the offerer, unless the value of the goods would not suffice to cover the cost of their keeping, or their keeping would be detrimental to him.

273.

If two or more persons by a transaction which is a commercial transaction for one or all of them take upon themselves an obligation for the benefit of one or all of them, each of them is liable jointly and severally on such obligation.

If in the case of a surety the obligation has arisen by a commercial transaction of the principal debtor, or if the suretyship itself is a commercial transaction, the principal debtor and the surety are liable on the obligation jointly and severally, even though they assumed it by separate acts.

274.

A trader who in the course of his business makes a transaction on behalf of another person, is entitled to a reasonable compensation.

275.

In the case of a loan of money concluded between traders, the lender is entitled to legal interest.

A trader who has in the course of his business expended money for another person is entitled to legal interest thereon from the day of its expenditure.

276.

The rate of legal interest as to an obligation arising out of a commercial transaction is six *per cent per annum*.

277.

The provisions of Art. 349 of the Civil Code do not apply to a pledge created as a security for an obligation arising from a commercial transaction.

278.

If the place where an obligation arising out of a commercial transaction is to be performed is not determined by the nature of the transaction or by the expressed intention of the parties, delivery of a specific thing is to be made at the place where the thing was at the time of the transaction. Otherwise performance is to be made at the present place of business of the creditor, or if there is no such place of business, at his domicile.

The performance of an obligation performable to order or to bearer must be made at the present place of business of the debtor, or if there is no such place of business, at his domicile.

As to business transacted in a branch office, the latter is deemed to be the place of business.

279.

The debtor on an obligation performable to order or

to bearer, even though a time of payment is fixed for it, is *in mora*\* only from the day when the holder after such time having arrived, has presented the instrument for performance.

280.

The provisions of Arts. 278, 2, and 279 apply correspondingly to the obligations mentioned in Art. 471 of the Civil Code.

281.

If an instrument performable to order or to bearer whose subject is the prestation\*\* of money or other things is lost, the holder may after he has applied for a public summons† require the debtor to deposit the thing which is the subject of the obligation, or to make performance according to the tenor of the instrument; the latter, however, only provided he gives a proper security.

282.

The provisions of Arts. 441, 457, 461 and 464 apply correspondingly to obligations performable to order whose subject is the prestation of money or other things.

283.

If by law or regulation or by usage certain business hours have been fixed, the performance of an obligation can be made or demanded only during such business hours.

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\* See note to Art. 412 of my translation of the Civil Code.

\*\* See note to Art. 401 of my translation of the Civil Code.

† See Code of Civil Procedure, Art. 764 *et seq.*



284.

As between traders, a creditor may, when an obligation arising from a transaction which on both sides is a commercial transaction has come due, retain until performance any thing belonging to the debtor which he has in his possession by virtue of any commercial transaction between them, unless a different intention has been expressed.

285.

Except as otherwise provided in this Code, an obligation which has arisen from a commercial transaction is extinguished by prescription, if it is not exercised for five years; but if by law or regulation a shorter period of prescription is provided, such provision is to govern.

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## CHAPTER II.

### SALE.

286.

When in case of a sale between traders the purchaser refuses or is unable to accept the thing sold, the seller may deposit it, or after he has notified the buyer to accept it within a reasonable time, may sell it at public auction. In such case he must without delay give notice thereof to the buyer.

Perishable goods may be sold without the above mentioned notification.

A seller who has sold the thing at public auction according to the foregoing provisions must deposit the proceeds, without prejudice, however, to his right to appropriate the whole or a part of it as purchase-money.

287.

If according to the nature of the sale or an intention expressed by the parties, the object of the sale can be accomplished only by performance at or within a certain time, and a party suffers such time to elapse without performing, the other party, unless he demands performance forthwith, is deemed to have rescinded the contract.

288.

In a sale between traders the buyer must without delay after having received the thing sold, examine it, and when he discovers any defect or shortage in quantity in it, he can rescind the contract or demand the reduction of the price or damages on the ground of such defect or shortage only if he at once gives notice thereof to the seller. The same applies when a buyer discovers within six months defects in the thing sold which it was impossible for him to discover at once.

These provisions do not apply in cases of bad faith on the part of the seller.

289.

In the case mentioned in the preceding article a buyer, even though he rescinds the contract, is bound to provide at the expense of the seller for the safe

keeping or the depositing of the thing sold. If, however, there is danger of its being spoiled or damaged, he must sell it at public auction after obtaining the permission of the court, and must keep the proceeds safely or deposit them.

When a buyer pursuant to the above mentioned provisions has sold at public auction, he must at once notify the seller thereof.

The provisions of this article do not apply when the places of business or, if there are no such, the domiciles of the buyer and seller are situated in the same city, town or village.

290.

The provisions of the preceding article apply correspondingly in case the goods delivered by the seller to the buyer are different from those ordered. If the goods exceed the quantity ordered, the same is the case with respect to the excess amount.

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## CHAPTER III.

### CURRENT ACCOUNT.

291.

A contract of current account is where two traders or a trader and a person other than a trader who are in regular business relations with each other, agree that the whole amount of the obligations arising from transactions between them within a determinate period shall be set off and the balance paid.

292.

If an obligation arising from a bill or other commercial instrument has been put into a current account, and the debtor on it fails to make performance, that item may be struck out from the account.

293.

If the parties have not fixed the period to be covered by the set off, such period shall be six months.

294.

After the parties have acknowledged an account containing all the separate items of the obligations, no objection can be made against a single item, except so far as there is a mistake or an omission.

295.

Legal interest on the balance arising from the set off may be claimed by the creditor from the day when the final account was closed.

These provisions do not affect the right to claim interest on each separate item from the day when it was entered in the current account.

296.

Either party may terminate the current account at any time. In such case he may close the account forthwith and require the balance to be paid.

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## CHAPTER IV.

### ANONYMOUS ASSOCIATION.

297.

A contract of anonymous association is where the parties agree that one of them shall make a contribution for the commercial business of the other, and that the profits arising from such business shall be divided among them.

298.

The contribution of the anonymous member becomes the property of the active member.

The anonymous member has no rights or duties as to third persons with respect to the transactions of the active member.

299.

If the anonymous member has agreed that his family name or full name be used in the trade name of the active member or that his trade name be used as the trade name of the active member, he is jointly and severally liable with the latter for all obligations arising after such use has begun.

300.

If his contribution has been reduced by losses, the anonymous member cannot claim any distribution of profits until such reduction has been made good.

301.

If the period of duration of the anonymous association has not been fixed by the contract of association or if it is determined that the contract shall be for the life time of one of the parties, either party may terminate the contract at the end of any business year, on a six months' notice.

Whether the duration of the association has been fixed or not, either party may at any time terminate it for any unavoidable cause.

302.

In addition of the cases mentioned in the preceding article an anonymons association is terminated :—

1. When the business forming the object of the contract of association has been completely accomplished, or its accomplishment is impossible;
2. By the death of the active member or by his being adjudged incompetent ;†
3. By the bankruptcy of the active member or of the anonymous member.

303.

Upon the termination of the contract of association the active member must return to the anonymous member the amount of his contribution. If, however, that has been reduced by losses, only the remaining amount is to be returned.

304.

The provisions of Arts. 108, 111, and 115 apply correspondingly to the anonymous member.

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† See Art. 5 of the Civil Code.

## CHAPTER V.

### BROKERAGE.

#### 305.

A broker is a person who carries on as a business the negotiation of commercial transactions as an intermediary between other persons.

#### 306.

A broker is not entitled to receive on behalf of the parties payment or other prestations† under a transaction negotiated by him unless there is a different intention expressed or a different custom exists.

#### 307.

If a sample is delivered to the broker for a transaction negotiated by him, he must keep it, until the transaction is completely finished.

#### 308.

After the transaction between the parties has come into existence, the broker must without delay make notes in writing containing the names or trade names of the parties, the date and the essential points of the transaction, and after signing them must deliver one to each party.

Except where the parties are to perform forthwith, the broker must cause each party to sign the note above mentioned and must then deliver it to the other party.

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† See note to Art. 401 of my translation of the Civil Code.

If in those cases a party does not accept or sign the note, the broker must without delay give notice thereof to the other party.

309.

A broker must enter in his books the matters mentioned in Art. 308, 1.

The parties may at any time require the broker to furnish them with a copy of any entry relating to the transaction negotiated for them.

310.

If a party has ordered the broker not to communicate his name or trade name to the other party, he must not enter such name or trade name in the documents mentioned in Art. 308, 1, and the copies mentioned in Art. 309, 2.

311.

If the broker has not communicated the name or trade name of a party to the other party, he is himself liable to the latter for performance.

312.

A commission can be claimed by the broker only after he has proceeded in the manner prescribed in Art. 308.

Each party must bear an equal part of the broker's commission.

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## CHAPTER VI.

### COMMISSION AGENCY.

#### 313.

A commission agent is a person who sells or buys goods as a business in his own name on account of another.

#### 314.

The commission agent by a sale or purchase made on account of another acquires himself rights against the other party to the transaction and becomes himself bound to him.

As between the commission agent and the mandator, besides the provisions of this chapter, the provisions relating to mandate\* and representation† apply correspondingly.

#### 315.

If in case of a sale or purchase made by the commission agent on account of his mandator, the other party does not perform his obligation, the commission agent is himself bound to perform in his place, unless a different intention has been expressed or a different custom exists.

#### 316.

Where a commission agent has made a sale for a

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\* See Art. 643 *et seq.* of the Civil Code.

† See Art. 99 *et seq.* of the Civil Code.

lower price or a purchase for a higher price than that designated by the mandator, such transaction is valid as against the mandator, if the agent takes upon himself the difference.

317.

A commission agent who has been ordered to sell or buy goods which have an exchange quotation, may himself be the buyer or seller. In such case the price to be paid is determined by the quotation of such goods on the exchange at the time when the commission agent gives notice of his being the buyer or seller.

A commission agent may even in such case charge a commission.

318.

If a mandator after having ordered the purchase of goods refuses or is unable to accept the goods bought, the provisions of Art. 286 apply correspondingly.

319.

The provisions of Arts. 37 and 41 apply correspondingly to commission agents.

320.

The provisions of this chapter apply correspondingly to a person who makes transactions other than sales or purchases as a business in his own name on account of another.

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## CHAPTER VII.

### FORWARDING AGENCY.

#### 321.

A forwarding agent is a person who forwards goods, as a business, in his own name.

Unless otherwise provided in this chapter, the provisions relating to commission agents apply correspondingly to forwarding agents.

#### 322.

A forwarding agent is exempted from damages for loss, damage or delay of the goods only if he proves that he and his assistants have not failed to use due care as to the receipt, delivery and safe keeping of the goods, and as to the choice of carriers or of other forwarding agents and to the transport.

#### 323.

A forwarding agent is entitled to his commission as soon as he has delivered the goods to the carrier.

When the amount of freight to be paid is fixed by the contract of forwarding, the forwarding agent is not entitled to an additional commission, unless specially agreed upon.

#### 324.

A forwarding agent may retain the goods delivered to him for forwarding only for the commission and

freight due on such goods, and for disbursements and advances made for the mandatord† about them.

325.

Where several persons are concerned successively in the forwarding of the goods, each subsequent agent must exercise the rights of the prior agents in their places.

In that case a subsequent agent who has made performance to an agent prior to him acquires the rights of the latter.

326.

A forwarding agent who makes performance to a carrier acquires the rights of the latter.

327.

Unless otherwise stipulated, a forwarding agent may himself undertake the carriage of the goods. In such case he has the same rights and duties as a carrier.

328.

The liability of a forwarding agent is extinguished by prescription after the expiration of one year from the day on which the goods were received by the consignee.

In case of a total loss of the goods the period of one year begins from the day when the delivery of the goods should have taken place.

These provisions do not apply where the forwarding agent acts in bad faith.

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† See my translation of the Civil Code, Art. 643 *et seq.*

329.

Obligations in favour of a forwarding agent against the mandator and the consignee are extinguished by prescription after the expiration of one year.

330.

The provisions of Arts. 338 and 343 apply correspondingly to forwarding agents.

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## CHAPTER VIII.

### CARRIAGE.

331.

A carrier is a person who undertakes as a business the transportation of goods or passengers by land, on inland seas or rivers, or in ports or bays.

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### SECTION I.

#### CARRIAGE OF GOODS.

332.

If required by the carrier, the sender must furnish him with a way-bill.

The way-bill must contain:—

1. The nature of the goods sent, their weight or

bulk, and the nature of the packages, their number and markings ;

2. The place of destination ;
3. The name or trade name of the consignee ;
4. The place where, and the time when the way-bill is made out.

The way-bill must be signed by the sender.

333.

If required by the sender, the carrier must furnish him with a bill of lading.

A bill of lading must contain :—

1. The particulars mentioned in Art. 332, 2, Nos. 1—3 ;
2. The name or the trade name of the sender ;
3. The freight ;
4. The place where, and the time when the bill of lading is made out.

The bill of lading must be signed by the carrier.

334.

After a bill of lading has been made, all matters relating to the transportation, as between the carrier and the holder of the bill, are governed by the provisions of the bill.

335.

The transfer of the bill of lading by endorsement has the same effect as the transfer of the goods themselves.

336.

If the whole or a portion of the goods are destroyed by *vis major*, the carrier cannot in so far claim pay-

ment of the freight. If he has already received the freight wholly or partly, he must return it.

If the whole or a portion of the goods are destroyed by reason of their nature or defects or by the fault of the sender, the carrier may claim the whole amount of the freight.

337.

A carrier is exempted from damages for loss, damage, or delay of the goods only if he proves that he, the forwarding agent, his or the agent's assistants and other persons employed in the transportation have not failed to use due care as to the receipt, delivery, safe keeping and transportation of the goods.

338.

As to specie, securities and other valuables, a carrier is not liable for damages, unless the sender, at the time when he entrusted the same for transportation to the carrier, made a clear declaration of their nature and value.

339.

When several carriers undertake the transportation of goods successively, they are jointly and severally liable for damages from the loss, damage or delay of the goods.

340.

The measure of damages in the case of a total loss of the goods is determined by the value which they would have had at the place of destination on the day when they should have been delivered,

The measure of damages in the case of a partial loss of, or of damage to the goods, is determined by the value which they had at the place of destination on the day when they were delivered. In case of delay, however, the provisions of the first paragraph apply correspondingly.

Freight and other expenses which are saved in consequence of the loss of or damage to the goods are to be deducted from the damages to be paid under the provisions of this article.

341.

If goods are lost or damaged by the bad faith or gross negligence of the carrier, he is liable for full damages.

342.

The sender or the holder of the bill of lading may require the carrier to stop the transportation, to return the goods, or to make any other disposition of them. In such case the carrier has a claim against the sender for payment of the freight in proportion to the transportation already performed, for his disbursements and for all expenses occasioned by any such disposition.

Such right of the sender is extinguished when the consignee after the arrival of the goods at the place of destination has demanded their delivery.

343.

After the goods have arrived at the place of destination, the consignee acquires the rights of the sender arising from the contract of carriage.

After the consignee has accepted the goods, he is bound to the carrier to pay him the freight and other expenses.



344.

When a bill of lading has been made, delivery of the goods can only be demanded on the surrender of the bill of lading.

345.

If the consignee cannot be found, the carrier may deposit the goods.

If, when the consignee cannot be found, the carrier has notified the sender to give his orders as to the disposal of the goods within a reasonable time fixed by the carrier, and the sender nevertheless fails to give such orders, the carrier may sell the goods by public auction.

A carrier who has made a deposit or a public auction according to the foregoing provisions must without delay give notice thereof to the sender.

346.

The provisions of the preceding article apply correspondingly where a dispute has arisen as to the delivery of the goods.

Before selling the goods by auction the carrier must once more notify the consignee to accept the goods within a reasonable time fixed by him, after which time he must again notify the sender.

The carrier must without delay give notice of the deposit or public auction of the goods to the consignee also.

347.

The provisions of Art. 286, 2 and 3 apply correspondingly in the cases mentioned in the two preceding articles.

348.

The liability of a carrier ceases when the consignee has accepted the goods without reservation and paid the freight and the other expenses. But this does not apply, if in the case of damage to or a partial loss of the goods which could not have been discovered at once, notice thereof is given to the carrier within two weeks from the day of delivery.

These provisions do not apply where the carrier has acted in bad faith.

349.

The provisions of Arts. 324, 325, 328 and 329 apply correspondingly to carriers.

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## SECTION II.

### CARRIAGE OF PASSENGERS.

350.

A carrier of passengers is exempted from liability to indemnify a passenger for any damage which the passenger may have received by reason of the carriage only if he proves that he and his assistants have not failed to use due care as to the carriage.

In determining the measure of damages the court is to take into consideration the station in life of the person injured and the members of his house.

351.

The liability of a carrier of passengers for luggage

which has been delivered to him by a passenger is the same as that of a carrier of goods, even though he did not make a separate charge for it.

If the passenger does not call for his luggage within one week from the day when it arrives at the place of destination, the provisions of Art. 286 apply correspondingly, but a notification or notice need not be given to a passenger whose domicile or residence is unknown.

352.

As to loss of or damage to a passenger's luggage which has not been delivered to the carrier, the latter is liable for damages only so far as he himself or his assistants are chargeable with fault.

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CHAPTER IX.

DEPOSIT.

SECTION I.

GENERAL PROVISIONS.

353.

A trader who in the course of his business receives a deposit, must use the diligence of a good manager, even though he does not receive any compensation for it.

354.

An innkeeper, a restaurant keeper, a keeper of a bath-

ing establishment, or a keeper of any place the business of which is the entertainment of guests is exempted from liability for loss or damage to the things which he receives in deposit from his guests only if he proves that such loss or damage was occasioned by *vis major*.

If things are lost or damaged which a guest has brought with him to any of the places above mentioned without specially depositing them with the keeper, the latter is liable for damages, if the loss or damage is caused by the carelessness of himself or of his assistants.

The keeper of any such place cannot free himself from the liability provided in the foregoing two paragraphs by a public notice that he would not be liable for things brought by the guests.

355.

For damages arising from the loss of or damage to specie, securities or other valuables a keeper of any of the places mentioned in the preceding article is liable only if the guest deposits them with a clear declaration of their nature and value.

356.

The liability specified in the preceding two articles is extinguished by prescription after the expiration of one year from the day when the keeper has returned the deposit or the guest has taken away with him the things which he brought.

In case of a total loss of such things the period of one year is computed from the day when the guest left the place.

These provisions do not apply in case of bad faith on the part of the keeper.



## SECTION II.

### WAREHOUSING.

357.

A warehouseman is a person who undertakes as a business to receive goods for storage in a warehouse for others.

358.

If required by the depositor, the warehouseman must furnish him with a warehouse receipt and an instrument of pledge for the goods deposited.

359.

The warehouse receipt and the instrument of pledge must have a serial number and be signed by the warehouseman. They must contain:—

1. The nature of the goods received, their quality and weight, and the nature of the packages as well as their number and markings ;
2. The name or the trade name of the depositor ;
3. The place of the storage of the goods ;
4. The charge for storage ;
5. The period for which the goods are to be stored, if that has been fixed ;
6. If the goods received for storage are insured, the amount of the insurance, its time limit, and the name or trade name of the underwriter ;
7. The place where, and the date when the instruments were made.

360.

When the warehouseman has delivered to the de-

positor a warehouse receipt and an instrument of pledge, he must enter the following facts in his books :—

1. The particulars specified in Art. 359, Nos. 1, 2 and 4—6 ;
2. The serial number of the instruments and the date when they were made.

361.

The holder of a warehouse receipt and of an instrument of pledge may require the warehouseman to divide the goods deposited, and to furnish him with a separate warehouse receipt and instrument of pledge for each part. In such case the holder must return the original warehouse receipt and instrument of pledge to the warehouseman.

The expense of such division and of the furnishing of the new receipts and instruments of pledge is to be borne by the holder.

362.

When a warehouse receipt and an instrument of pledge have been made, as between the warehouseman and the holder, the facts relating to the deposit are governed by the terms of those instruments.

363.

When a warehouse receipt and an instrument of pledge have been made, the goods deposited can be disposed of only by means of those instruments.

364.

A warehouse receipt and an instrument of pledge, although issued to a named creditor, may be transferred

or pledged by indorsement, unless indorsement is forbidden in the instrument itself.

So long as no pledge has been made, the warehouse receipt and the instrument of pledge cannot be transferred separately.

365.

The provisions of Art. 335 apply correspondingly to warehouse receipts.

366.

If the warehouse receipt or the instrument of pledge has been lost, the holder may require the warehouseman to furnish him with a new one, provided he gives proper security. In such case the warehouseman must enter the fact in his books.

367.

In making the first indorsement in the instrument of pledge the amount of the obligation, the interest and the time of performance must be entered.

The first pledgee can set up his right of pledge against third persons only if he has noted the facts above mentioned upon the warehouse receipt with his signature.

368.

A holder of an instrument of pledge who has not received payment by the time of maturity, must have a protest made in conformity with the provisions relating to bills.

369.

The holder of the instrument of pledge cannot require

the goods to be sold by public auction before one week from the day of the making of the protest.

370

The warehouseman after deducting from the proceeds of the auction of the goods the expenses of the auction, the taxes assessed on the goods, the charge for storage and other expenses relating to the storage as well as disbursements, must pay the remaining amount to the holder of the instrument of pledge on its surrender.

If a surplus remains after deducting from the proceeds such expenses, taxes, charges and disbursements and the amount of the obligation in favour of the holder of the instrument of pledge with interest and the cost of the protest, it must be paid to the holder of the warehouse receipt on its surrender.

371.

If the proceeds of the auction are not sufficient to perform the whole of the obligation entered in the instrument of pledge, the warehouseman must enter the amount paid in the instrument of pledge and return it, and make an entry thereof in his books.

372.

A holder of an instrument of pledge must receive performance in the first place out of the goods deposited, and only in case such performance is not sufficient, can he claim the missing amount against the debtor and the other indorsers.

373.

If the holder of an instrument of pledge who has not



received payment by the day of maturity omits to have a protest made or to apply for the sale of the goods by public auction within two weeks from the day of protest, he loses his claim against the indorsers.

374.

The claim of a holder of an instrument of pledge against the debtor and the other indorsers is extinguished by prescription, if it is not exercised for one year from the day of maturity.

375.

A depositor or a holder of a warehouse receipt may at any time during business hours demand against the warehouseman the inspection of the goods or the delivery of samples to him, or may make any dispositions necessary for the preservation of the goods.

A holder of an instrument of pledge may at any time during business hours demand against the warehouseman the inspection of the goods.

376.

A warehouseman is exempted from damages for the loss of or damage to the goods deposited only if he proves that he himself and his assistants have not failed to use due care about their safe keeping.

377

A warehouseman must demand payment of his charges, disbursements and other expenses relating to the goods deposited at the time when those goods are taken out of the warehouse. If only a part of the goods are taken out, he may demand the payment of a proportional amount.

378.

If the parties have not fixed the period of storage, the warehouseman is not entitled to return the goods before six months have elapsed from the day when they were brought into the warehouse, unless an unavoidable cause exists for doing so.

379.

When a warehouse receipt and an instrument of pledge have been made, delivery of the goods can only be demanded on the surrender of those instruments.

380.

The holder of a warehouse receipt may even before the obligation entered in the instrument of pledge is due, deposit with the warehouseman the whole amount of such obligation together with interest to the day of performance and require the goods deposited to be returned to him.

The amount thus deposited must be paid to the holder of the instrument of pledge upon its surrender.

381.

When a depositor or a holder of a warehouse receipt refuses or is unable to receive the goods deposited, the provisions of Art. 286 apply correspondingly.

382.

The provisions of Art. 348 apply correspondingly to warehousemen.

383.

The liability of a warehouseman for the loss of or damage to the goods deposited is extinguished by prescription after the expiration of one year from the day when the goods were taken out of the warehouse.

In the case of a total loss of the goods the period of one year is computed from the day when the warehouseman gives notice thereof to the holder of the warehouse receipt, or if that person is not known, to the depositor.

The provisions of this article do not apply in case of bad faith on the part of the warehouseman.

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## CHAPTER X.

### INSURANCE.

#### SECTION I.

##### INSURANCE AGAINST LOSS.

##### SUBSECTION I.

##### GENERAL PROVISIONS.

384.

A contract of insurance against loss is where one party agrees to indemnify the other for a loss which may result from a certain contingent event, and the other party agrees to pay him a premium therefor.

385.

Only an interest capable of being estimated in money can become the subject of a contract of insurance.

386.

If the sum insured exceeds the value of the subject

of the insurance, the contract of insurance is invalid as to the excess.

387.

If two or more contracts of insurance are made simultaneously on the same subject, and the total amount of the sums insured exceeds the value of the subject, the amount falling to the charge of each underwriter is in proportion to the sum insured by him.

When the dates of two or more contracts of insurance are the same, they are presumed to have been made simultaneously.

388.

If two or more contracts of insurance are made successively, a prior underwriter is first liable for the loss. If the amount to be paid by him is not sufficient to cover the whole loss, the next following underwriter is liable for it.

389.

After the whole insurable interest is already insured an additional contract of insurance may be made only in the following cases:—

1. If it is agreed that the right against the prior underwriter shall be assigned to the new underwriter ;
2. If it is agreed with the new underwriter that the right against the prior underwriter shall be wholly or partly renounced ;
3. If the new contract is on the condition that the prior underwriter does not indemnify for the loss.

390.

If two or more contracts of insurance are made simultaneously or successively, a renunciation of the right against one of the underwriters does not affect the rights and duties of the others.

391.

If a part of the insurable interest is insured, the liability of the underwriter is determined by the proportion of the sum insured to the value of the insurable interest.

392.

If during the period of insurance the insurable interest is substantially diminished, the insurer may require the underwriter to reduce the sum insured and the premium. The reduction of the premium, however, takes effect only for the future.

393.

The amount of the loss to be indemnified for by the underwriter is determined by the value at the place where and the time when the loss occurred.

The expenses of the adjustment of such loss are to be borne by the underwriter.

394.

If the parties have valued the insurable interest, the underwriter can demand a reduction of the amount of indemnity only if he proves that the agreed valuation is substantially too high.

395.

Unless specially agreed, the underwriter is not liable

for loss happening by reason of war or civil commotion.

396.

An underwriter is not liable for loss caused by the nature or defects of the subject of the insurance, by its natural waste, or by the bad faith or gross negligence of the insurer or the insured.

397.

If at the time of making the insurance contract one of the parties to the contract or the insured knows that the event insured against will not happen, or that it has already happened, the contract is invalid.

398.

If at the time of making the insurance contract, the insurer by bad faith or gross negligence omits to disclose material facts or makes false statements in regard to material facts, the contract is invalid, unless the underwriter knows or ought to know such facts.

399.

When the contract of insurance is wholly or partly invalid, the insurer and the insured, provided they acted in good faith and without gross negligence, may require the underwriter to return the whole or a part of the premium paid, as the case may be.

400.

If the parties to the insurance contract in fixing the amount of the premium took into consideration a particular risk, the insurer is entitled to have the premium reduced for the future, if such risk ceases to exist during the continuance of the insurance.

401.

A contract of insurance may be made on behalf of another. In such case the insurer is bound to the underwriter to pay the premium.

402.

If the insurer who made a contract of insurance on behalf of another without having a mandate to do so, did not inform the underwriter of such fact, the contract is invalid. If he did inform the underwriter thereof, the insured has the benefit of the contract at once.

403.

The underwriter must, if required by the insurer, furnish him with a policy of insurance.

The policy, which is to be signed by the underwriter, must contain :—

1. The subject of the insurance ;
2. The risk to be taken by the underwriter ;
3. The value of the insurable interest, if that has been fixed ;
4. The sum insured ;
5. The amount of the premium and the manner of its payment ;
6. If the duration of the insurance has been fixed, its commencement and its end ;
7. The name or the trade name of the insurer ;
8. The date of the contract of insurance ;
9. The place where and the date when the policy was made.

404.

If the insured assigns the subject of the insurance, he is presumed at the same time to have assigned his

rights under the contract of insurance.

If by such assignment of the subject of the insurance the risk is considerably altered or increased, the contract of insurance becomes invalid.

405.

If the underwriter is adjudged bankrupt, the insurer may require proper security to be given him or may rescind the contract.

If in such case the insurer rescinds the contract, such rescission takes effect for the future only.

These provisions apply correspondingly, if the insurer is adjudged bankrupt, unless he has already paid the whole amount of the premium.

406.

If an insurer who made the contract of insurance on behalf of another is adjudged bankrupt, the underwriter may require the insured to pay the premium, unless the insured renounces his rights.

407.

Until the responsibility of the underwriter begins, the insurer may rescind the contract wholly or partly.

408.

If before the responsibility of the underwriter begins, it becomes, otherwise than by an act of the insurer or the insured, impossible for the risk assumed by the underwriter to arise as to the whole or a part of the subject of insurance, the underwriter must refund the whole or a part of the premium, as the case may be.



409.

In the cases mentioned in the two preceding articles the underwriter is entitled to a sum equal to one half of the premium to be refunded.

410.

If during the continuance of insurance the risk is substantially altered or increased by a cause imputable to the insurer or the insured, the contract of insurance becomes invalid.

411.

If during the continuance of the insurance the risk is substantially altered or increased by a cause not imputable to the insurer or insured, the underwriter may rescind the contract. Such rescission, however, takes effect only for the future.

In such case the insurer or insured must give notice of the risk having substantially altered or increased as soon as he has knowledge thereof. If he omits to do so, the underwriter may consider the contract of insurance as having become invalid from the time when such alteration or increase of the risk took place.

If the underwriter after receiving the notice above mentioned or obtaining knowledge of the alteration or increase of the risk does not rescind the contract of insurance without delay he is deemed to have waived his right to rescind.

412.

When a loss occurs from the happening of the risk insured against, the insurer or the insured must as soon as he knows of it, give notice thereof to the underwriter.

413.

When a loss occurs to the subject of the insurance for which the underwriter is liable, he remains liable, even though the subject of the insurance is afterwards destroyed by the happening of a risk for which he would not be liable.

414.

The insured must use due care to prevent a loss, but even though the necessary or useful expenses and disbursements made for that purpose exceed the sum insured, the underwriter is bound to reimburse him.

In the case of the foregoing proviso the provisions of Art. 391 apply correspondingly.

415.

When the subject of the insurance is totally lost, if the underwriter has paid the whole of the sum insured, he acquires the rights of the insured as to the subject of the insurance. If, however, only a part of the insurable interest was insured, the rights of the underwriter are determined by the proportion of the sum insured to the insurable interest.

416.

If loss has occurred by the act of a third person, the underwriter on paying the whole amount due to the insured acquires the rights of the insurer or of the insured against such third person up to the limit of the amount paid by him.

If the underwriter has paid only a part of the amount due to the insured, he can exercise the right mentioned in the preceding paragraph only so far as the

right of the insurer or the insured is not injured thereby.

417.

The liability to pay the sum insured is extinguished by prescription after two years have elapsed, and the liability to pay the premium after one year.

418.

The provisions of this section apply correspondingly to mutual insurance, so far as they are not inconsistent with the nature of such contracts.

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## SUBSECTION II.

### INSURANCE AGAINST FIRE.

419.

The underwriter must indemnify for any loss caused by fire, irrespective of its origin. This, however, does not apply to the cases mentioned in Arts. 395 and 396.

420.

The underwriter is liable for any damage caused to the subject of the insurance by necessary measures used for extinguishing or averting the fire.

421.

If a hirer or any person who keeps a thing for another has insured the thing to cover his liability for any damages which he may be bound to pay, the owner has a direct claim against the underwriter for such indemnity.

422.

In addition to the particulars specified in Art. 403, 2 a policy of fire insurance must contain :—

1. The locality, construction and manner of the building insured;
2. If a movable is insured, the locality, construction and manner of use of the building in which it is contained.

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### SUBSECTION III.

#### INSURANCE ON CARRIAGE.

423.

Unless otherwise agreed upon, the insurer is bound to indemnify every loss which the goods in transit might sustain from the time when they are received by the carrier, until they are delivered to the consignee.

424.

In case of the insurance of goods in transit the insurable interest is the value of the goods at the place and time of sending *plus* the freight to the place of destination and other expenses.

Profits to be made by the arrival of the goods are included in the insurable interest only if there is an express agreement to that effect.

425.

A policy of an insurance on carriage must in addition to the particulars designated in Art. 403, 2 contain :—

1. The route and the manner of the transportation ;

- 2 The name or the trade name of the carrier ;
3. The place where the goods are to be received and delivered ;
4. The time fixed, if any, within which the transport is to be accomplished.

426.

Unless otherwise agreed upon, a contract of insurance on carriage does not become invalid, if by some necessity connected with the transport, such transport is interrupted for a time, or the route or manner of transportation is changed.

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## SECTION II.

### INSURANCE ON LIFE.

427.

A contract of life insurance is where one party agrees to pay a certain sum of money dependent upon the life or death of the other party or of a third person, and the other party agrees to pay him a premium therefor.

428.

The person who is to receive the sum insured, must be the insured, his heir, or a relative† of his.

The rights arising from a contract of insurance can be acquired by assignment only by a relative of the insured.

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† As to the definition of "relatives", *shinzoku* 親族, see Art, 725 of the Civil Code.

If the person who is to receive the sum insured, dies, or the relationship between the insured and such person terminates, the insurer may appoint another person to receive the money, or he may require the amount accumulated on account of the insured to be paid back.

If the insurer dies without having exercised the aforementioned right, the insured is to receive the sum insured.

429.

If at the time of making the contract of insurance, the insurer or the insured by bad faith or gross negligence omits to disclose material facts or makes false statements in regard to material facts, the contract is invalid, unless the underwriter knows or ought to know such facts.

430.

In addition to the particulars specified in Art. 403, 2, a policy of life insurance must contain :—

1. The nature of the contract of insurance ;
2. The name of the insured ;
3. If a person who is to receive the amount of the insurance has been determined, the name of such person and the relationship between him and the insured.

431.

The underwriter is not bound to pay the sum insured :—

1. If the death of the insured occurs in consequence of suicide or of a duel or another criminal act, or by the execution of capital punishment ;

2. If the person who is to receive the sum insured has wilfully occasioned the death of the insured. If, however, such person, was to receive only a part of the sum, the underwriter remains liable for the payment of the rest.

In the case mentioned under No. 1 the underwriter must pay back the amount accumulated on account of the insured.

432.

As soon as the insurer or the person who is to receive the sum insured has knowledge of the death of the insured, he must give notice thereof to the underwriter.

433.

The provisions of Arts. 395, 397, 399—401, 403, 1, 405—407, 410, 411, 417 and 418 apply correspondingly to life insurances.

When in the case mentioned in Arts. 395, 405, 407, 410 and 411 the underwriter is not bound to pay the sum insured, he must pay back the amount accumulated on account of the insured.

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## BOOK IV.

### BILLS.†

#### CHAPTER I.

##### GENERAL PROVISIONS.

434.

Bill in the sense of this law are bills of exchange, promissory notes and cheques.

435.

A person who puts his signature upon a bill is liable thereon according to the tenor of such bill.

436.

If a representative puts his signature upon a bill without indicating that he is acting on behalf of the principal, the latter is not liable on the bill.

437.

A person who puts his signature upon a forged or fraudulently altered bill is liable according to the tenor of such forged or fraudulently altered bill.

It is presumed that the signature upon a fraudulently altered bill was made before the alteration.

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† Tegata 手形.



The forger, the falsifier, and any person who has acquired in bad faith or with gross negligence a forged or falsified bill has no rights under the bill.

438.

Even though the obligation of an incapacitated person arising on a bill, is rescinded, the other rights and duties under the bill are not affected thereby.

439.

If matters not provided in this Book are inserted in a bill, they have no effect under the bill.

440.

A debtor on a bill cannot set up against a person who makes a claim under the bill any defence not provided in this Book ; but this does not apply to defences available directly against the claimant.

441.

A claim for the surrender of a bill cannot be made against any person who has acquired it without bad faith or gross negligence.

442.

Presentation of a bill for acceptance or payment, protest and all other acts to be done against a person interested in order to exercise or maintain a right under the bill, must be done at the place of business or, if there is none, at the domicile or residence of such person. If, however, such person consents, the act may be done at any other place.

If the place of business, the domicile or the residence

of the person interested is unknown, the notary or *shut-tatsuri*\* by whom the protest is to be made must ascertain it by applying to the authorities on the spot. If it cannot be ascertained in that manner, they may make the protest at their office or at the office of the said authorities.

443.

Obligations† existing against the acceptor or against the maker of a promissory note are extinguished by prescription after three years from the day of maturity, the right of recourse of the holder against the prior parties after six months from the day of the protest for non-payment, and the right of recourse of an indorser against the prior parties after six months from the day when he himself made payment on recourse taken against him.

444.

Even though rights under a bill have been lost by prescription or by the omission of some necessary proceeding, the holder is nevertheless entitled to recourse against the drawer and the acceptor to the extent to which they have been enriched.‡

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\* See note to Art. 514.

† As to the meaning of "obligation" see the note p. 104 of my translation of the Civil Code.

‡ See Art. 709 *et seq.* of the Civil Code.

## CHAPTER II.

### BILLS OF EXCHANGE.

#### SECTION I.

##### THE DRAWING OF A BILL OF EXCHANGE.

445.

In addition to the signature of the drawer, a bill of exchange must contain :—

1. The designation of it as a bill of exchange ;
2. A sum certain ;
3. The name or the trade name of the drawee ;
4. The name or the trade name of the payee ;
5. An absolute order to pay ;
6. The date of the drawing ;
7. A day certain of maturity ;
8. The place of payment.

446.

If the sum inserted in the principal part of the bill\* is different from a sum mentioned in another part, the former sum is the sum due on the bill.

447.

A person may draw a bill payable to himself, or a bill upon himself.

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\* In this chapter, for convenience sake, the word " bill " is generally used instead of " bill of exchange."

448.

The drawer may name in the bill a referee in case of need at the place of payment.

449.

A bill can be drawn payable to bearer only if the sum payable is thirty yen or more.

450.

The maturity of the bill must be :—

1. On a fixed day, or
2. On a fixed day after date, or
3. At sight, or
4. On a fixed day after sight.

451.

When the drawer has not specified in the bill the day of maturity, it is payable at sight.

452.

When the drawer has not mentioned in the bill the place of payment, the place of the domicile of the drawee as stated in the bill is the place of payment.

453.

If the place of payment is different from the place of the domicile of the drawee, another person may be named in the bill to make payment in his place,

454.

The drawer may specify in the bill at what particular place in the place of payment it is to be paid.

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## SECTION II.

### INDORSEMENT.

455.

A bill of exchange, even though issued to a named creditor, may be transferred by indorsement, unless it is forbidden by the drawer in the bill.

456.

A drawer, acceptor or indorser who acquires the bill by indorsement may again transfer it by indorsement.

457.

An indorsement is made by writing the name or trade name of the indorsee and the date of the indorsement on the bill, a copy thereof or an alonge with the indorser's signature.

An indorsement may also be made by the mere signature of the indorser. In such case further transfers may be made by mere delivery of the bill.

458.

An indorser may in indorsing the bill add a referee in case of need at the place of payment.

459.

An indorser may in indorsing the bill add that he does not assume any liability on the bill.

460.

If an indorser in indorsing the bill adds that he forbids

further indorsements, he incurs no liability on the bill to the parties subsequent to his indorsee.

461.

When an indorser has made an indorsement by his mere signature, any holder may fill up the indorsement to himself.

462.

If the holder of a bill indorses it after the time for protest for non-payment has elapsed, the indorsee acquires only the rights of his indorser. In that case such indorser is not liable on the bill.

463.

A holder may by indorsement pledge the bill or give a mandate to another to collect it. The purpose of such indorsement must be stated on the bill.

In such case the indorsée may further indorse the bill for the same purpose.

464.

A holder of an indorsed bill can exercise his rights only if there is an unbroken series of indorsements extending to him. If, however, an indorsement has been made by mere signature, the following indorser is deemed to have acquired the bill by the said indorsement.

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### SECTION III.

#### ACCEPTANCE.

##### 465.

The holder of a bill of exchange may at any time present it to the drawee for acceptance.

##### 466.

The holder of a bill payable on a fixed day after sight must present it to the drawee for acceptance within one year from its date, or within any shorter time specified by the drawer.

If the holder cannot prove by a protest that he presented the bill as above prescribed, he loses his rights under the bill against the prior parties.

##### 467.

If the drawee of a bill payable on a fixed day after sight does not accept it on presentation by the holder, or does not date the acceptance, the holder must have it protested within the time limited for presentation. In such case the day of protest is to be taken as the day of presentation.

If the holder omits to have the bill protested, he loses his rights under the bill against the prior parties.

If in the case of the drawee's omitting to date the acceptance no protest is made by the holder, the last day of the period within which the bill might have been presented is taken to be the day of presentation.

468.

Acceptance is made by a declaration of acceptance on the bill with the signature of the drawee.

If a drawee puts his signature on the bill, he is deemed to have accepted it.

469.

A drawee may limit his acceptance to a part of the sum payable.

If, except in the foregoing case, an absolute acceptance is not given, acceptance is deemed to be refused. The acceptor, however, is bound according to the tenor of any acceptance made by him.

470.

By acceptance the drawee becomes bound to pay the amount accepted for on the day of maturity.

471.

If an acceptor has not paid the bill, the amount to be paid to the holder or to the indorser or drawer, who has paid on recourse, is determined by the provisions of Arts. 491 or 492.

472.

If the place of payment and the place of domicile of the drawee are different, and the drawer has not designated on the bill a person to pay the bill instead of the drawee, the latter may name such person when he accepts. If he does not do so, he is bound to pay himself at the place of payment.

In the case of the foregoing paragraph the drawer may direct in the bill that it shall be presented for



acceptance. If in that case the holder cannot prove by protest that such presentation has been made, he loses his rights under the bill against the prior parties.

473.

A drawee may at the time of acceptance specify in the bill at what particular place in the place of payment it shall be paid.

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## SECTION IV.

### THE CLAIM FOR SECURITY.

474.

If a drawee fails to accept the bill of exchange, the holder is entitled to require the prior parties to give him proper security for the amount payable on the bill and expenses.

If the drawee has limited his acceptance to a part of the sum payable, proper security may be demanded by the holder for the rest of the amount and expenses.

475.

A holder of a bill who intends to demand security under the provisions of the preceding article, must have the bill protested for non-acceptance and must without delay give notice of his claim for security to the person from whom he intends to demand security.

476.

If an indorser has received from a subsequent party the notice mentioned in the preceding article, he may require the prior parties to give him proper security for the sum to be secured and expenses.

In such case the indorser must without delay give notice of his claim for security to the person from whom he intends to demand security.

477.

A person against whom a claim for security has been made according to the provisions of the preceding three articles must without delay give proper security upon surrender of the protest for non-acceptance. However, he may instead of giving security deposit a proper sum of money.

478.

When a prior party has given security or made a deposit, it is deemed to have been done for the benefit of and against all parties subsequent to him.

When a holder or an indorser has given the notice of Arts. 475, or 476, 2 it is deemed to have been given for all the parties subsequent to the party receiving it.

479.

Security given in compliance with the provisions of Art. 477 loses its effect, or any deposit made instead of security may be reclaimed :—

1. Upon a subsequent absolute acceptance of the bill ;
2. Upon payment of the amount of the bill and expenses ;

3. If the person who gave the security or made the deposit or a party prior to him has made payment on recourse ;
4. If the rights under the bill have been lost by prescription or by the omission of any necessary proceeding ;
5. If within one year from the day of maturity recourse for payment has not been taken against the person who has given security or made the deposit.

480.

When in case of the bankruptcy of the acceptor the latter fails to give proper security, the holder may demand acceptance from the referee in case of need; but he must have a protest made and without delay give notice thereof to the referee in case of need.

If there is no referee in case of need, or if he does not give an absolute acceptance of the bill, the holder may demand proper security from the prior parties. In such case the provisions of Arts. 474-478 apply correspondingly.

481.

Security given in compliance with Art. 480, 2, loses its effect, and any deposit made instead of security may be reclaimed :—

1. If the referee in case of need subsequently gives an absolute acceptance ;
2. If the acceptor subsequently gives proper security ;

3. In the cases specified in Art. 479, Nos. 2-5.

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## SECTION V.

### PAYMENT.

482.

The holder of a bill of exchange payable at sight must present it for payment within one year from its date, or within any shorter time specified by the drawer.

If the holder cannot prove by a protest that he has presented the bill as above prescribed, he loses his rights under the bill against the prior parties.

483.

Payment need be made only on the surrender of the bill.

The payer of a bill may require the holder to give a receipt on the bill and to sign it.

484.

Even though the acceptance is for the whole amount of the bill, the holder cannot refuse to accept part payment.

In case of part payment the holder must note it on the bill, and make a copy of the bill, sign it and deliver it to the payer.

485.

If a demand for payment of the bill has not been

made, the acceptor may, after the period for making a protest for non-acceptance has elapsed, free himself from his liability by depositing the amount due on the bill.

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## SECTION VI.

### THE RIGHT OF RECOURSE.

#### 486.

If the drawee fails to pay a bill of exchange, the holder has a right of recourse against the prior parties.

#### 487.

If the holder intends to take recourse under the provisions of the preceding article, he must present the bill to the drawee for payment, and if payment is not made, must have it protested for non-payment on the day of maturity or within the two days next following, and must give notice of the protest to the person against whom he intends to take recourse at the latest on the day next following the day of protest.

If the holder fails to take the proceedings above prescribed, he loses his rights under the bill against the prior parties.

#### 488.

An indorser to whom the notice provided for in Art. 487, 1 has been given by a subsequent party may take recourse against any prior party.

In such case the indorser must give notice of his

claim for recourse to the person against whom he intends to take it, at the latest on the next day after he himself has received notice.

489.

Even though the holder omits to have the bill protested for non-payment, he does not lose his rights under it against those who have waived protest.

If the holder has had a protest for non-payment made, even those parties who have waived protest are not discharged from their liability to pay the expenses thereof.

490.

When the place of payment is different from the place of the domicile of the drawee, a holder who intends to take recourse must present the bill for payment to any third person designated on the bill to pay instead of the drawee, and if no such designation has been made, to the drawee at the place of payment. If the third person designated to pay, or the drawee himself, as the case may be, fails to pay, the holder must have the bill protested for non-payment at the place of payment in conformity with the provisions of Art. 487, 1, and must without delay give notice of his claim for recourse.

If, in the case of a third person being designated on the bill to pay, the holder fails to take the proceedings specified in the preceding paragraph, he loses his rights under the bill against the acceptor also.

491.

The holder of a bill may take recourse for the following amounts ;—

1. The sum due on the bill and not yet paid together with legal interest thereon from the day of maturity ;
2. The fees for the protest and other expenses.

If the place of the domicile of the person against whom recourse is taken is different from the place of payment, the amount above mentioned is calculated according to the rate of exchange of a bill payable at sight drawn from the place of payment on the place of the domicile of the person against whom recourse is to be taken. If there is no such rate at the place of payment, the calculation must be made according to the rate of exchange of a bill payable at sight drawn upon the place nearest to the place of the domicile of the person against whom recourse is taken.

492.

An indorser against whom recourse has been taken, may himself take recourse for the following amounts :—

1. The sum paid by him together with legal interest thereon from the day of his payment ;
2. All expenses paid by him.

In this case the provisions of Art. 491, 2 apply correspondingly.

493.

The holder of a bill or an indorser may take recourse by drawing another bill upon a prior party.

494.

A bill drawn by a holder or an indorser under the provisions of the preceding article must be a bill at sight, the place of payment of which is to be the place

of the domicile of the person against whom recourse is had.

If such a bill is drawn by the holder, the place of payment of the original bill, and if drawn by an indorser, the place of the latter's domicile is to be the place of drawing.

495.

Recourse can be taken only on surrender of the bill, the protest for non-payment and a recourse account.

A person who has paid the amount recoverable on recourse may require the person receiving the money to give a receipt on the recourse account and sign it.

496.

The provisions of Art. 478, 2, apply correspondingly to a claim for recourse.

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## SECTION VII.

### SURETYSHIP.

497.

A person who puts his signature on a bill of exchange, a copy thereof or an alonge, in order to become a surety for an obligation arising upon the bill, is liable, even though such obligation is invalid, to the same extent as the principal debtor is or would be.

498.

If it does not appear for whom a person has become surety, he is deemed to have become surety for the



acceptor, or if there is as yet no acceptance, for the drawer.

499.

A surety who has performed his obligation acquires the rights which the holder had against the principal debtor, and the rights which the latter would have against prior parties.

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## SECTION VIII.

### INTERVENTION.

#### SUBSECTION I.

##### ACCEPTANCE FOR HONOUR.

500.

If a referee in case of need is named, the holder of a bill of exchange who has had it protested for non-acceptance, can claim security against the prior parties only after having demanded acceptance from such referee.

If the referee in case of need does not accept, the holder must have such fact mentioned in the protest for non-acceptance.

501.

The holder of a bill may refuse an acceptance for honour from a person other than a referee in case of need.

502.

If several persons offer to accept for honour, the holder may at his option allow any one of them to accept.

503.

An acceptance for honour is made by a declaration on the bill with the signature of the acceptor.

If the acceptor for honour does not designate in the bill the person for whom he accepts, the acceptance is deemed to have been made for the honour of the drawer.

504.

The holder must have entered in the protest for non-acceptance the fact of the acceptance for honour, and must deliver the protest to the acceptor for honour on payment of the expenses of its making.

The acceptor for honour must without delay deliver the protest to the person for whom he has accepted.

505.

If the drawee fails to pay the amount due on the bill, the acceptor for honour is liable to the parties subsequent to the person for whom he has accepted to pay any amount unpaid on the bill together with the expenses ; but he is exempted from such liability, if the holder fails to present the bill to him for payment on the day of maturity or within the two days next following.

506.

The holder of a bill and the parties subsequent to the person for whom acceptance for honour is made

lose by the acceptance for honour the right of demanding security.

507.

The person for whom acceptance for honour is made may demand security from the prior parties. In such case the provisions of Arts. 475-479 apply correspondingly.

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SUBSECTION II.

PAYMENT FOR HONOUR.

508.

If a referee in case of need is named or an acceptance for honour made, the holder of a bill of exchange who has had it protested for non-payment, can take recourse against the prior parties only after he has presented the bill for payment to the acceptor or if he does not pay, to the referee in case of need, on the day of maturity or within the two days next following.

If the acceptor for honour or the referee in case of need fails to pay, the holder must have such fact mentioned in the protest for non-payment.

If the holder fails to proceed as prescribed in the two foregoing paragraphs, he loses his rights under the bill against the person who has named the referee or against the person in whose favour acceptance for honour has been made, and the parties subsequent to them.

509.

The holder of a bill cannot refuse payment for honour even if offered by a person other than a referee in case of need or an acceptor for honour. If he refuses, he loses his rights under the bill against the party for whom payment for honour was offered and the parties subsequent to him.

510.

If several persons offer to pay a bill for honour, the holder must accept the payment by which the greatest number of persons will be discharged from their obligations.

511.

If a payer for honour who is not a referee in case of need or an acceptor for honour does not name the person for whose honour he pays, such payment is deemed to be made for the benefit of the drawee.

512.

The holder must have the fact of the payment for honour entered in the protest for non-payment, and must on payment of the sum due on the bill and expenses deliver to the payer for honour the protest and the bill.

513.

When the payer for honour has made payment, he acquires the rights of the holder against the acceptor, the person for whose honour he has paid and the parties prior to him.

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## SECTION IX.

### PROTEST.

#### 514.

A protest is made on the application of the holder of the bill by a notary or a *shuttatsuri*.\*

#### 515.

In addition to the signature of the notary or *shuttatsuri* a protest must contain :—

1. The matters mentioned in the bill, in a copy thereof and in an alonge ;
2. The name or the trade name of the party protested against and of the protesting party ;
3. The terms of the demand made to the party protested against, and a statement that the latter failed to comply with the demand, or the reason why it was not possible to reach him ;
4. The place where and the date when the demand mentioned under No. 3 was made or unsuccessfully attempted to be made ;
5. If the place of business or the domicile or residence of the party protested against is unknown, a statement that inquiry therefor was made of the authorities on the spot ;
6. If the protest is made at a place other than that prescribed by law, a statement that the party protested against has consented thereto ;

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\* *Shuttatsuri* 執達吏 is an executive officer attached to certain courts whose principal duty is the execution of judicial decrees.

7. If there has been an acceptance or payment for honour, the nature of the intervention and the name or trade name of the acceptor or payer for honour and of the person for whose honour intervention was made.

516.

If a claim under a bill is to be made against two or more persons, one protest is sufficient as to such claim.

517.

A notary or *shuttatsuri* who has made a protest must enter the whole contents of the instrument in his register.

When a protest has been lost, the parties interested can demand a copy, which shall have the same force as the original.

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SECTION X.

PARTS AND COPIES OF BILLS OF EXCHANGE.

518.

The holder of a bill of exchange may require the drawer to deliver to him additional parts of the bill; but a holder other than the payee can do so only through the intermediation of the prior parties.

If a drawer has made additional parts of a bill, all the indorsers are bound to make their indorsements on each part of the bill.

519.

If additional parts are not designated as such, each of them is valid as an independent bill.

520.

If one of a set of bills has been paid, all the other parts become invalid, except those on which an acceptance is made.

A person who has indorsed several parts of a bill to different persons or who has put his acceptance on several parts, is liable according to the provisions relating to bills upon any part not surrendered to him at the time of payment.

521.

If the holder of several parts of a bill has forwarded one part for acceptance, he must make a note on each other part of the person to whom he has forwarded it.

The holder of a bill containing such a note may require the person to whom a part has been forwarded for acceptance to return such part to him. When such person does not return it, security can be required from or recourse had to the prior parties, as the case may be, only if such fact and the impossibility of getting acceptance or payment on one or more of the other parts of the bill is proved by protest.

522.

The holder of a bill is entitled to make copies thereof.

If any matter is inserted in a copy of a bill, it must be distinguished from matters inserted in the original bill.

523.

If a holder of a bill who has made copies thereof for-

wards the original bill for acceptance, he must make a note on each of the copies of the person to whom it has been forwarded.

The holder of a copy containing such a note can require the person to whom the original bill has been forwarded to return it to him.

524.

If the person to whom a bill has been forwarded for acceptance fails to return it, the holder of a copy of the bill, if he proves such fact by a protest, is entitled to demand security from the persons who have signed the copy, or, after the day of maturity as mentioned in the copy has arrived, he may take recourse against the same parties.

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## CHAPTER III.

### PROMISSORY NOTES.

525.

In addition to the signature of the maker a promissory note must contain :—

1. The designation of it as a promissory note ;
2. A sum certain ;
3. The name or the trade name of the payee ;
4. An absolute promise to pay ;
5. The date of making ;
6. A day certain of maturity ;
7. The place where it is made.



526.

If the maker does not name in the promissory note a place of payment, the place where it is made is the place of payment.

527

The holder of a note payable on a fixed day after sight must present the note to the maker within one year from its date, or if the maker has specified a shorter time in the note, within such time.

If the holder cannot prove by a protest that he has presented the bill as above prescribed, he loses his rights under the bill against all prior parties except the maker.

528.

If the maker of a note payable on a fixed day after sight does not on presentation state on the bill the fact or the day of presentation, the holder must have a protest made within the time limited for presentation. In such case the day of the making of the protest is deemed to be the day of presentation.

If the holder fails to have a protest made, he loses his rights under the bill against all prior parties except the maker.

If the maker does not state on the note the time of presentation, and the holder fails to have a protest made, the last day of the time limited for presentation is deemed to be the day of presentation.

529.

The provisions of Arts. 446, 449-451, 453-457, 459-464,

471, 480-499, 508-517 and 522 apply correspondingly to promissory notes.

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## CHAPTER IV.

### CHEQUES.

#### 530.

In addition to the signature of the drawer a cheque must contain :—

1. The designation of it as a cheque ;
2. A sum certain ;
3. The name or the trade name of the drawee ;
4. The name or the trade name of the payee, or a statement that the cheque is payable to bearer ;
5. An absolute order to pay ;
6. The date of drawing ;
7. The place of payment.

#### 531.

A person may draw a cheque payable to himself.

#### 532.

A cheque is payable at sight.

#### 533.

The holder of a cheque must present it for payment

within one week from its date.

A holder who fails to present the cheque as above prescribed has no right of recourse against the prior parties.

534.

For the purpose of recourse against the prior parties it is sufficient that the holder of a cheque instead of having a protest for non-payment made, causes the drawee within the time fixed in Art. 533, 1, to note the refusal of payment and its date on the cheque with his signature.

535.

If the drawer or holder of a cheque draws two parallel lines on its face and writes between the lines the word 銀行 (*ginkō*)\* or any other word having the same meaning, the drawee can make payment only to a bank.

If the drawer or holder writes the trade name of a particular bank between the parallel lines, the drawee can make payment only to such bank. This, however, does not affect the right of the latter bank to appoint another bank to collect the cheque by striking out its own trade name and inserting the trade name of the latter.

536.

A drawer is liable to a fine of from five yen to one thousand yen :—

1. If he draws a cheque except against a deposit or a credit granted to him :

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\*That is "bank."

2. If he inserts a false date in a cheque.

537.

The provisions of Arts, 446, 452, 455, 457, 459-462, 464, 483, 484, 486-489, 491, 492, 495, 496, 514, 515 and 517 apply correspondingly to cheques.

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## BOOK V.

### COMMERCE BY SEA.

#### CHAPTER I.

##### SHIPS AND SHIPOWNERS.

538.

A ship in the sense of this law is a vessel used in navigation at sea for the purpose of doing commercial transactions.

The provisions of this Book do not apply to boats or to vessels moved wholly or mainly by oars of any kind.

539.

Things entered in the ship's inventory of appurtenances are presumed to be accessory to the ship.

540.

The shipowner must make registration as provided by special laws, and must have a ship's certificate of nationality issued to him.

These provisions do not apply to ships of less than twenty tons burden or than two hundred *koku* carrying capacity.

541.

An assignment of the ownership of a ship can be set up against third persons only if it has been registered and noted in the certificate of nationality.

542.

If the ownership of a ship is assigned pending a voyage, the profits and losses of such voyage belong to the assignee, unless otherwise provided by special agreement.

543.

A seizure or a provisional seizure cannot be levied upon a ship after she has completed the preparations for her departure on a voyage, except for an obligation contracted on account of such departure.

544.

A shipowner can free himself from liability for acts of the master done within the limits of his legal authority or for damage to other persons caused by the acts of the master or another mariner in the performance of their duties, by abandoning at the ending of the voyage to the creditor the ship, the freight, and all claims for damages or commission which have accrued to him in relation to the ship ; unless he himself is in fault.

The foregoing provisions do not apply to the rights of a mariner under his contract of hiring.

545.

A shipowner cannot exercise the right mentioned in the preceding article, if he enters upon a new voyage without the consent of the creditor.

546.

As between co-owners of a ship all matters relating to the use of the ship are to be decided by a vote of the majority according to the value of their interests.

547.

Co-owners of a ship must bear all expenses for the use of the ship in proportion to the value of their respective interests.

548.

If the co-owners resolve to undertake a new voyage or to make extensive repairs of the ship, any dissentient co-owner may require the others to buy his interest at a reasonable price.

A co-owner intending to make such a requirement must give notice thereof to the other co-owners or to the ship's husband within three days after the passing of such resolution.

If, however, such co-owner did not take part in the proceedings at the passing of such resolution, the said period of three days begins with the day following the day when he received notice of it.

549.

Each co-owner is liable in proportion to the value of his interest for the performance of all obligations arising as to the use of the ship.

550.

An apportionment of profits and losses must be made at the end of each voyage in proportion to the value of the respective interests of the co-owners.

551.

Even though there exist relations of association between the co-owners of a ship, any one of them, with the exception of the ship's husband, may assign his

interest in the ship or any part thereof without the consent of the other co-owners.

552.

The co-owners must appoint a ship's husband.

For the appointment of a person who is not himself a co-owner the consent of all the co-owners is necessary.

The appointment of a ship's husband and the termination of his right of representation must be registered.

553.

The ship's husband has authority to do in the place of the co-owners all acts in or out of court relating to the use of the ship, except as follows:—

1. The assignment, abandonment, letting or mortgaging of the ship ;
2. The insurance of the ship ;
3. The undertaking of a new voyage ;
4. Extensive repairs of the ship ;
5. Borrowing money.

A limitation upon the right of representation of a ship's husband cannot be set up against third persons acting in good faith.

554.

A ship's husband must keep a book in which all matters relating to the use of the ship are to be entered.

At the end of each voyage the ship's husband must without delay render an account of the voyage and submit it to all the co-owners for their approval.



555.

If by reason of the transfer of the interest of a co-owner or of his losing his nationality the ship would lose her Japanese nationality, the other co-owners may buy such co-owners's interest at a reasonable price or apply to the court to have it sold at public auction.

When a ship belonging to a commercial company would lose her Japanese nationality by the transfer of the interest of a partner, the other partners in the case of an ordinary partnership, or the other partners with unlimited liability in the case of a limited partnership or of a joint stock limited partnership may buy such interest at a reasonable price.

556.

The hiring of a ship, if duly registered, is valid against any third person who afterwards acquires a real right in the ship.

557.

The hirer of a ship who uses her in navigation for the purpose of doing commercial transactions has as against third persons the same rights and duties in all matters relating to her use as a shipowner.

In such case all preferential rights arising in respect of the use of the ship are valid also against the owner; unless the person entitled to such right had notice that the act was in contravention of the contract for use.

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## CHAPTER II.

### MARINERS. \*

#### SECTION I.

##### THE MASTER.

###### 558.

The master is exempted from liability for damage to the owner, charterer, shipper, and other persons interested, only if he proves that he has not failed to use due care in the performance of his duties.

Except as to the shipowner, the master is not exempted from such liability even though he has acted under the shipowner's orders.

###### 559.

If a seaman acting in the performance of his duties causes damage to any other person, the master is exempted from liability therefor, only if he proves that he has not failed to exercise due supervision.

###### 560.

If the master is prevented by any unavoidable circumstance from commanding the ship himself, he may, unless otherwise provided by law or regulations, appoint another person to perform such functions; in which case he will be responsible to the owner for selecting a proper person.

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\* The word "mariners" includes in this translation the master of the ship.

561.

It is the duty of the master before starting upon a voyage to ascertain whether any obstacle exists to the prosecution of the voyage, and whether all necessary preparations have been duly made for the voyage.

562.

The master must have on board the following papers:—

1. The ship's certificate of nationality;
2. A list of the seamen;
3. An inventory of the ship's appurtenances;
4. The log book;
5. A list of the passengers;
6. All papers relating to the contract of carriage and to the cargo;
7. All papers received from the custom house.

Ships not going to foreign countries may by regulation be exempted from the requirements mentioned under Nos. 3-5.

563.

Except in case of unavoidable necessity, the master may from the time of the loading of the goods and the coming on board of the passengers until the goods are discharged and the passengers landed, leave the ship only after having entrusted his functions to the person who is to command the ship in his place.

564.

As soon as the preparations for the voyage are completed, the master must proceed on the voyage without delay and prosecute it to the port of destina-

tion without deviation from the route previously fixed, unless a case of necessity arises.

565.

During the voyage the master must take such measures in respect to the cargo as are for the best interest of all the parties interested.

Any party interested may free himself from an obligation arising in respect to his goods from an act of the master by abandoning such goods to the creditor, unless such party is himself in fault.

566.

Outside of the ship's home port, the master has authority to do all acts in or out of court necessary for the voyage.

In the ship's home port he has authority only to hire and discharge seamen, except so far as a special mandate has been given him.

567.

A limitation upon the master's rights of representation cannot be set up against third persons acting in good faith.

568.

The following acts can be done by the master only to pay the expenses of repairs of the ship, assistance in case of distress or salvage or expenses necessary to the prosecution of the voyage :—

1. The mortgage of the ship ;
2. Borrowing money ;
3. The sale or pledge of the whole or a part of

the cargo, except in the case mentioned in Art 565, 1.

In the case of a sale or a pledge of the cargo by the master, the amount of damages to be paid is determined by its value at the port of discharge at the time when it ought to have arrived, less all expenses saved thereby.

569.

If the master without a special mandate for doing so, has incurred expenses or assumed obligations for the purposes of the voyage, the shipowner may exercise against him the right specified in Art. 544.

570.

If the ship becomes unrepairable outside of her home port, the master may sell her at public auction by permission of the maritime authorities.

571.

In the following cases a ship is deemed to be unrepairable:—

1. If the repairs cannot be made at the place where the ship is, and the ship cannot be taken to a place where they could be made;
2. If the cost of the repairs would be more than three-fourths of the value of the ship.

The value as specified under No. 2 is, in case the ship is damaged pending the voyage, the value which she had at the commencement of the voyage, in other cases her value before the happening of the damage.

572.

If necessary for the prosecution of the voyage, the

master may use the cargo for the purposes of the voyage. In such case the provisions of Art. 568, 2, apply correspondingly.

573.

The master must give prompt notice to the shipowner of all important circumstances relating to the voyage.

The master must without delay at the end of the voyage render an account of the voyage and submit it to the shipowner for his approval. If required by the shipowner, he must render such account at any time.

574.

The shipowner may discharge the master at any time, but if the discharge is without just cause, the master may claim compensation for all damage arising therefrom.

If a master who is also a co-owner is discharged against his will, he may require the other co-owners to buy his interest for a reasonable price.

If a master intends to make such requirement, he must without delay give notice thereof to the other co-owners or the ship's husband.

575.

All obligations in favour of the master against the shipowner are extinguished by prescription after the expiration of one year.

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## SECTION II.

### SEAMEN.

576.

After the proceedings of hiring have been duly completed, a seaman must go on board at the time appointed by the master.

After coming on board a seaman must not leave the ship without the permission of the master.

577.

During the time of service a seaman's maintenance must be provided for by the shipowner.

578.

If a seaman during the time of his service without any excess or gross fault of his own falls sick or is hurt, the shipowner must bear the costs of medical treatment and care for him for a period not exceeding three months.

In the case of the foregoing paragraph a seaman is entitled to his wages for the time during which he has rendered his services. He is entitled to his whole wages, if he has contracted the sickness or received the hurt in the performance of his duties.

579.

If a seaman's wages have been fixed at a lump sum for one voyage, and the voyage is prolonged in time or, except on account of some *vis major*, in distance, the seaman is entitled to a proportionate increase of wages,

If the time or distance of the voyage is reduced, he is still entitled to full wages.

580.

If a seaman dies after he has entered upon his service, the shipowner must pay his wages up to the day of his death.

If a seaman dies in consequence of the performance of his duties, the shipowner must bear the expenses of his burial.

581.

In the following cases the master may discharge a seaman :—

1. If it appears, before the voyage is commenced, that he is unfit for his service ;
2. If he neglects his duties to a material extent, or if he commits a gross fault in the performance of his duties ;
3. If he is sentenced to imprisonment or any severer punishment ;
4. If he falls sick or is hurt, so as to be no longer able to render his services ;
5. If in consequence of *vis major* the departure of the ship or the prosecution of the voyage becomes impossible.

In the cases mentioned in Nos. 1—3 the seaman is entitled to his wages for the time that he has rendered his services.

In the case mentioned in Nos. 4 and 5 the seaman may demand his wages up to the time of his discharge, and is also entitled to be sent back to the port where he shipped ; but in the case mentioned under No. 4 the



provisions of the foregoing paragraph apply, if there is a fault on the part of the seaman.

582.

If a seaman is discharged without one of the causes specified in Art. 581, 1, he is entitled to his wages not only for the time he has rendered services but for one additional month. If such discharge takes place elsewhere than at the port where he shipped, he is also entitled to his wages for a time sufficient for his return to such port, and he has a right to be sent back to such port.

583.

A seaman is entitled to claim his discharge in the following cases :—

1. If the ship loses her Japanese nationality ;
2. If without fault on his part he falls sick or is hurt, so that he is unable to render his services ;
3. If the master illtreats him.

In these cases the seaman is entitled to his wages up to the day of his discharge, and to be sent back to the port where he shipped.

584.

If during the voyage the ownership of the ship is changed, the rights and duties of a seaman under his contract of hiring continue for and against the new shipowner.

585.

The hiring of a seaman must not be for more than one year. If it is made for a longer time, such time shall be reduced to one year.

The hiring of a seaman may be renewed, but not for more than one year from the time of renewal.

586.

If the term of the hiring is not fixed, a seaman, unless otherwise provided by a special agreement, cannot demand his discharge until the ship is safely anchored, the cargo discharged and the passengers landed.

587.

The contract of hiring made with a seaman comes to an end in the following cases :—

1. If the ship is lost ;
2. If she becomes unrepairable ;
3. If she is captured.

In those cases a seaman is entitled to his wages up to the time of the termination of the contract, and to be sent back to the port where he shipped.

588.

When a seaman is entitled to be sent back to the port where he shipped, he may instead claim the cost thereof in money.

589.

The provisions of Art. 575 apply correspondingly to obligations existing in favour of a seaman.

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CHAPTER III.

CARRIAGE BY SEA.

SECTION I.

CARRIAGE OF GOODS.

SUBSECTION I.

GENERAL PROVISIONS.

590.

If a contract of carriage is made for the whole or a part of a ship, either party may demand from the other a written contract of carriage.

591.

The shipowner warrants to the charterer or the shipper that the ship is seaworthy at the time of her sailing.

592.

The shipowner cannot even by an express agreement be exempted from liability for damage caused by his own fault, or by the bad faith or the gross fault of a mariner or of any other person employed or by the unseaworthiness of the ship.

593.

If goods have been loaded on board in contravention of any law or regulation or not in pursuance of the contract, the master may at any time discharge such goods, and if the safety of ship or cargo is endangered

by them, he may even jettison them. If, however, he carries the goods, he may charge the maximum freight for that kind of goods at the place and time of loading.

Claims of the shipowner or other persons interested for damages are not affected by the foregoing provisions.

594.

If the contract of carriage covers the whole ship, the shipowner must give notice to the charterer, as soon as the ship is ready for the loading of the goods.

If a time is fixed within which the charterer is to effect the loading of the goods, it is computed from the day after the day of the above mentioned notice. If goods are loaded after the expiration of such time, the shipowner is entitled even without an express agreement to reasonable compensation.

The days during which loading is prevented by *vis major* are not reckoned as a part of the time of loading.

595.

If the master is to receive the goods from a third person, and such person cannot be ascertained or does not load the goods, the master must at once give notice thereof to the charterer. In such case the loading of the goods by the charterer can be made only within the time fixed for loading.

596.

The charterer may, even though he has not loaded the whole goods, require the master to commence the voyage.

A charterer who makes such a requirement must

pay in addition to the full freight, all expenses arising from the failure to load the whole goods and must, if required by the shipowner, give proper security.

597.

The master may at once begin the voyage at the expiration of the time fixed for loading, even though the charterer has not loaded the whole goods.

In that case the provisions of Art. 596,2 apply correspondingly.

598.

Before the voyage has been begun, the charterer may terminate the contract on paying one half of the freight.

If the charter includes a return voyage, and the charterer terminates the contract before the beginning of the return voyage, he must pay two thirds of the freight. The same applies, if the ship is to come from another port to the port of loading, and the charterer terminates the contract before the departure of the ship from the port of loading.

If the charterer terminates the contract under the provisions of the foregoing two paragraphs after the whole or a part of the goods have been loaded, he must bear the expenses of their loading and discharging.

If the charterer does not load the goods within the time fixed for doing so, he is deemed to have terminated the contract.

599.

Even though the contract is terminated under the provisions of the preceding article, the charterer is not ex-

empted from his obligation to pay incidental costs and disbursements.

In the case of Art. 598, 2, the charterer must in addition pay any amount to be borne in proportion to the value of the goods on the ground of general average, assistance in distress or salvage.

600.

After the voyage has begun, the charterer may terminate the contract only on condition that besides paying full freight he performs the obligations provided for in Art. 606, 1 and makes compensation for all damage arising from the discharging of the goods or gives proper security.

601.

If in case of a partial charter of the ship the charterer before the commencement of the voyage terminates the contract without the other charterers and shippers terminating theirs, he must pay the full freight; but any freight earned by the shipowner from the carriage of other goods in their stead is to be deducted.

If the whole or a part of the goods have already been loaded, the charterer can even before the commencement of the voyage terminate the contract only with the consent of the other charterers and shippers.

The provisions of the seven preceding articles apply correspondingly to a partial charter of a ship.

602.

If the contract of carriage is for the carriage of particular goods, the shipper must without delay load the goods in accordance with the directions of the master.

If the shipper neglects to load the goods, the master may begin the voyage at once. In such case the shipper must pay the full freight, but any freight earned by the shipowner from the carriage of other goods in their stead is to be deducted.

603.

The provisions of Art. 601 apply correspondingly in case the shipper terminates the contract.

604.

The charterer or the shipper must deliver all necessary papers to the master within the time set for loading.

605.

In case of a charter of the whole or a part of the ship, the master must give notice to the consignee as soon as the ship is ready to discharge the goods.

If a time for discharge is fixed, it is computed from the day after the day of such notice. If goods are discharged after the expiration of such time, the shipowner is entitled, even without an express agreement, to a reasonable compensation.

Those days during which discharge is prevented by any *vis major* are not reckoned as a part of the time for discharge.

If the contract of carriage is for particular goods, the consignee must unload them without delay in accordance with the directions of the master.

606.

When the consignee has received the goods, he is bound to pay, according to the contract of carriage or

to the tenor of the bill of lading, the freight, incidental expenses, disbursements and any amount to be borne in proportion to the value of the goods on the ground of general average, assistance in distress or salvage.

The master must not deliver the goods except on the payment of the aforesaid sums.

607.

If the consignee fails to receive the goods, the master may deposit them. In such case he must without delay give notice thereof to the consignee.

If the consignee cannot be ascertained, or if he refuses to receive the goods, the master must deposit them. In such case he must without delay give notice thereof to the charterer or shipper.

608.

If the freight is according to the weight or bulk of the goods, it is determined by their weight or bulk at the time of delivery.

609.

If the freight is according to time, its amount is determined by the time from the day when the loading of the goods was begun to the day when the discharge is completed; but any time during which the ship by *vis major* was compelled to lie at anchor at the port of departure or in the course of the voyage, or to undergo repairs in the course of the voyage is to be excluded. The same applies in the case of Art. 594, 2 or 605, 2 to days on which goods were loaded or discharged after the expiration of the time limited for loading or discharge.



610.

A shipowner, in order to obtain payment of the amount mentioned in Art. 606, 1, may by the permission of the court sell the goods by public auction.

The shipowner may exercise this right against the goods even after the master has delivered them to the consignee; but this provision does not apply, if two weeks have elapsed since the day of delivery, or if a third person has acquired the possession of the goods.

611.

If the shipowner does not exercise the right mentioned in the preceding article, he loses his claim against the charterer or shipper; provided that the latter persons must make compensation so far as they have been actually enriched.

612.

If the whole or a part of the ship has been chartered, and the charterer again makes a contract of carriage with a third person, the shipowner only is bound to such third person to perform the latter contract so far as that lies within the limits of the master's duties; but this does not affect the exercise of the right mentioned in Art. 544.

613.

If the whole ship is chartered, the contract of carriage is terminated in the following cases:—

1. For the cause mentioned in Art. 587, 1;
2. If the goods are lost by *vis major*.

If the cause mentioned in Art. 587, 1 occurs during the voyage, the charterer must pay freight in propor-

tion to the part of the carriage performed, but not to exceed the value of the goods.

614.

If the voyage or the carriage becomes unlawful under any law or regulation, or if by reason of any *vis major* the object of the contract can no longer be accomplished, either party may terminate the contract.

If such cause occurs after the commencement of the voyage, and in consequence thereof the contract is terminated, the charterer must pay freight in proportion to the part of the carriage performed.

615.

If the causes mentioned in Arts. 613, 1, No. 2, and 614, 1 affect a part of the cargo only, the charterer may load other goods in its stead so far as the obligations of the shipowner are not thereby made more onerous.

If the charterer elects to exercise this right, he must discharge or load the goods without delay. If he neglects to do so, he must pay full freight.

616.

The provisions of Arts. 613 and 614 apply correspondingly to a contract of carriage relating to a part of the ship or to particular goods.

Even though the causes mentioned in Arts. 613, 1, No. 2, and 614, 1, affect only a part of the goods, the charterer or shipper may terminate the contract on payment of the full freight.

617.

The shipowner may claim the full freight :—

1. If the master has sold or pledged the goods according to the provisions of Art. 568, 1 ;
2. If he has used them for the purpose of the voyage according to the provisions of Art. 572 ;
3. If he has disposed of them according to the provisions of Art. 641.

618.

The rights of the shipowner against the charterer, shipper or consignee are extinguished by prescription after the expiration of one year.

619.

The provisions of Arts. 328, 336-341 and 348 apply correspondingly to shipowners.

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## SUBSECTION II.

### BILLS OF LADING.

620.

Upon the loading of the goods the master must on demand execute and deliver at once to the charterer or shipper a bill of lading in one or more parts.

621.

The shipowner may authorize a person other than the master to execute and deliver bills of lading in the latter's place.

622.

A bill of lading must contain :—

1. The name and nationality of the ship;
2. The name of the master, unless he himself executes the bill ;
3. The nature, weight or bulk of the goods and the manner of their packing, their number and markings ;
4. The name or trade name of the charterer or shipper ;
5. The name or trade name of the consignee, or a statement that the goods are to be delivered to the holder ;
6. The port of loading ;
7. The port of discharge, or if the port of discharge is to be designated by the charterer or shipper after the beginning of the voyage, the port where such designation is to be made ;
8. The freight ;
9. If the bill of lading is drawn in several parts, the number of such parts ;
10. The place and date of the execution of the bill of lading.

The bill of lading must be signed by the master or the person acting in his place.

623.

The charterer or shipper must, if required by the master or the person acting in his place, deliver a signed copy of the bill.

624.

If at the port of discharge the holder of any part of

a bill of lading drawn in parts demands the delivery of the goods, the master cannot refuse it.

625.

Outside of the port of discharge the master may deliver the goods only on surrender of all the parts of the bill of lading.

626.

If two or more holders of different parts of the bill of lading demand delivery of the goods the master must without delay deposit them and give notice thereof to each of the holders who have demanded such delivery. If a holder demands delivery after a part of the goods have already been delivered to another holder in accordance with the provisions of Art. 624, the same applies to the remainder of the goods.

627.

If one of several holders of different parts of the bill has got delivery of the goods from the master before the others, the other parts of the bill become invalid.

628.

If there are several holders of different parts of the bill of lading and the master has not yet delivered the goods to any one of them, the one whose part was first forwarded or delivered by the original holder has the best right.

629.

The provisions of Arts. 334, 335, 455 and 483 apply correspondingly to bills of lading.

## SECTION II.

### THE CARRIAGE OF PASSENGERS.

630.

A passage ticket issued to a person named in it cannot be transferred to another person.

631.

The maintenance of the passengers during the voyage is at the charge of the shipowner.

632.

The shipowner cannot charge separate freight for the luggage which a passenger has a right to bring on board under his contract, except by virtue of an express agreement to that effect.

633.

If a passenger does not come on board by the time of departure, the master may begin or prosecute the voyage without him. In such case the passenger must pay his full fare.

634.

Before the commencement of the voyage the passenger may terminate the contract by paying one half of his fare.

After the commencement of the voyage he can terminate the contract only by paying his whole fare.

635.

If before the commencement of the voyage it happens that the passenger cannot make the voyage by reason of his death, his sickness or any *vis major* affecting his person, the shipowner is entitled to one quarter of the fare.

If one of the aforesaid causes occurs after the commencement of the voyage, the shipowner may demand at his option either one quarter of the fare or so much of the fare as is proportional to the part of the voyage performed.

636.

If the ship has to be repaired during the voyage, the master must during the time of such repairs supply the passenger with proper lodging and maintenance. But this does not apply, if he offers to forward the passenger by another ship to the port of destination without prejudice to the passenger's rights under the contract.

637.

The contract for carriage comes to an end by any of the causes specified in Art. 587, 1. If such cause occurs during the voyage, the passenger must pay fare in proportion to the part of the voyage performed.

638.

If a passenger dies, the master must take measures as to his luggage on board in such a way as is most to the interest of the heirs.

639.

The provisions of Arts. 350, 351, 1, 352, 591, 592, 614,

and 618 apply correspondingly to the carriage of passengers by sea.

The provisions of Arts. 593 and 617 apply correspondingly to passengers' luggage.

640.

If a ship is wholly or partly chartered to carry passengers, the provisions of Arts. 590-619 apply correspondingly to the relations between the shipowner and the charterer.

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## CHAPTER IV.

### SEA DAMAGE.

641.

General average\* includes all damage and expense arising from any disposition made by the master in regard to the ship or cargo to save both from a common danger.

This provision does not affect a recourse by a party interested against any person from whose fault the danger arose.

642.

A general average loss must be borne by the persons

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\* The Japanese word *kyōdōkaisen* 共同海損 means more literally "common sea damage."



interested in proportion to the value of the ship or the cargo saved thereby, one half of the freight, and the amount of the general average loss.

643.

For the purpose of general average contribution, the value of the ship is her value at the time and place of arrival, the value of the cargo is its value at the time and place of discharge ; but as to the cargo, freight and expenses which in the case of loss need not be paid, are to be deducted from its value.

644.

The persons bound to contribute to the general average according to the provisions of the preceding two articles are not responsible beyond the values remaining at the time of the arrival of the ship or of the delivery of the cargo.

645.

The following things are not bound to contribute to general average: The armament of the ship, the wages of the mariners, the supplies for them and for passengers, and their clothing ; but nevertheless damage to any such thing is to be contributed for by the other parties interested.

646.

Damage to goods laden without a bill of lading or any documents sufficient for assessing the value of the cargo, or to appurtenances of the ship not included in the inventory of the appurtenances, cannot be contributed for.

The same applies to goods loaded on deck, except in the case of short coasting voyages.

The persons interested in such cargo are, however, not exempted from the liability to contribute to the general average.

647.

The amount of the damage to be contributed for as general average is determined with reference to the value of the ship at the time and place of arrival or of the cargo at the time and place of discharge, but in respect to the cargo all expenses are to be deducted whose payment has been made unnecessary by the loss or damage.

The provisions of Art. 338 apply correspondingly to general average.

648.

If in bills of lading or other documents sufficient for assessing the value of cargo, the value of cargo is stated lower than its actual value, the amount of damage caused to such cargo is to be determined with reference to the value so stated.

If the value of cargo is stated higher than the actual value, the persons interested in such cargo are liable for general average in proportion to the value so stated.

These provisions apply correspondingly, if a wilfully false statement has been made as to any circumstance afflicting the value of the cargo.

649.

If after the parties interested have distributed the general average in accordance with the provisions of

Art. 642, the owner of the ship, its appurtenances, or the cargo recovers the whole or a part thereof, he is bound to pay back what he has received in payment after deducting therefrom the expense of salvage and the amount of the damage arising from a partial loss or damage.

650.

If in the case of collision caused by the fault of mariners of both ships, it cannot be determined which party was more in fault, the owners of both ships shall bear the loss arising by such collision equally.

651.

An obligation arising from general average or collision is extinguished by prescription after the expiration of one year.

In case of general average such period is computed from the completion of the adjustment.

652.

The provisions of this chapter apply correspondingly to expenses which have been necessarily incurred because the ship has been detained in the port of departure or in the course of the voyage by any *vis major*.

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## CHAPTER V.

### MARINE INSURANCE.

#### 653.

A contract of marine insurance is for indemnification against loss which is liable to arise from any cause connected with the voyage.

The provisions of Arts. 384-418 apply to marine insurance so far as there are no different provisions contained in this chapter.

#### 654.

So far as not differently provided in this chapter or in the contract of insurance, the underwriter is liable for all loss arising during the continuance of insurance to the subject of insurance, from any cause connected with the voyage.

#### 655.

The underwriter is responsible for the amount of a general average to be contributed by the insured. If, however, only a part of the insurable interest is insured, the amount to be paid by the underwriter is determined by the ratio of the sum insured to the insurable interest.

#### 656.

As to an insurance of a ship, the insurable interest is her value at the time of the commencement of the risk.

657.

As to an insurance of cargo, the insurable interest is its value at the time and place of loading *plus* the expenses of loading and insurance.

658.

As to an insurance on profits to be made or any commission to be gained by the arrival of the cargo, if the insurable interest is not fixed by the contract, the sum insured is presumed to be the insurable interest.

659.

If a ship is insured for a single voyage, the risk of the underwriter commences when the loading of goods or taking of ballast begins.

If a ship is insured after the goods have been loaded or the ballast has been taken in, the risk begins at the time of the making of the contract.

In the above mentioned cases the risk ends on the discharge of the goods or ballast at the port of destination being finished. If, however, the discharge is delayed, except by *vis major*, the risk ends at the time when the discharge ought to have been finished.

660.

When cargo or profits to be made or any commission to be gained by the arrival of the cargo have been insured, the risk of the underwriter begins at the time when the cargo leaves the land, and ends when the discharge of the cargo is finished at the port of discharge.

In such case the proviso of Art. 659,3 applies correspondingly.

661.

In addition to the matters specified in Art. 403, 2, a policy of marine insurance must contain :—

1. If the ship is insured, her name, nationality and class, the name of the master, the ports of departure and destination and the ports of call, if any ;
2. If the cargo or profits to be made or any commission to be gained by the arrival of the cargo are insured, the name, nationality and class of the ship and the ports of loading and of discharge.

662.

If the voyage is changed before the risk of the underwriter begins, the contract of insurance becomes invalid.

If the voyage is changed after the risk has begun, the underwriter is freed from liability for circumstances happening after the change has been made. But this does not apply, if the cause of the change is not imputable either to the insurer or to the insured.

If the port of destination is changed, and the carrying out of the change has been begun, this shall be deemed a change of the voyage, even though the ship has not deviated from the insured route.

663.

If the insured fails to begin or prosecute the voyage, or if he changes the route, or otherwise substantially changes or increases the risk, the underwriter is not liable for events which happen after such change or increase ; but this does not apply, if such change or

increase did not contribute to the happening of the event, or if the change or increase was owing to any *vis major* imputable to the underwriter or was for any just cause.

664.

A change of the master does not affect the validity of the contract of insurance, even though the master is designated in the contract.

665.

If in the case of the insurance of cargo or of profits to be made or any commission to be gained by its arrival the ship is changed, the underwriter is not liable for events which happen thereafter; but this does not apply, if the change was for a cause not imputable to the insurer or the insured.

666.

If at the time of making the insurance contract the ship in which the goods are to be loaded is not specified, the insurer or the insured must without delay after he has knowledge of the loading of the goods notify the underwriter of the name and nationality of the ship.

If the insurer or the insured fails to give such notice, the contract of insurance becomes invalid.

667.

The underwriter is not liable for the following kinds of damage and expenses :—

1. For any damage arising from the nature or defects of the subject of insurance, from its

- natural waste or from the bad faith or gross negligence of the insurer or the insured ;
2. In an insurance on ship or freight any damage arising from the fact that at the beginning of the voyage the necessary preparations for safety on the voyage had not been made, or necessary papers were not on board ;
  3. In an insurance of cargo or of profits to be made or any commission to be gained by its arrival, any damage arising from the bad faith or gross negligence of the charterer, shipper or consignee ;
  4. For pilotage, port dues, lighthouse fees, quarantine fees and other ordinary expenses incurred in respect to the ship or cargo for the purposes of the voyage.

668.

If damage or expenses not falling under general average do not amount to at least two per cent of the insurable interest exclusive of the costs of adjustment, the underwriter is not bound to make compensation for them.

If such damage or expenses amount to more than two per cent of the insurable interest, the underwriter must pay the whole amount.

The provisions of the two foregoing paragraphs apply correspondingly where the parties have fixed in the contract the percentage of damage or expenses for which the underwriter is not to be liable.

The percentages mentioned in the foregoing three paragraphs are to be computed separately for each voyage.



669.

If cargo insured arrives damaged at the port of discharge, the underwriter must pay a part of the insurable interest bearing such ratio to the sum insured as the value of the damaged cargo bears to its sound value.

670.

If cargo insured is sold during the voyage because of any *vis major*, the loss to be paid by the underwriter is the difference between the proceeds of the sale remaining after the deduction of the freight and other expenses and the insurable interest. This does not affect the application of Art. 391 in case the insurable interest is only partly insured.

If in the case of the foregoing paragraph the buyer does not pay the price, the underwriter must pay it. On payment he acquires the rights of the insured against the buyer.

671.

In the following cases the insured may claim the entire sum insured on abandoning the thing insured to the underwriter:—

1. If the ship is lost ;
2. If she is missing ;
3. If she has become unrepairable ;
4. If the ship or cargo is captured ;
5. If the ship or cargo is detained by public authority and not liberated for six months.

672.

The ship is to be deemed missing, if it is not known for six months whether she is in existence or not.

In case of a time insurance the insured may abandon, even though the period of his insurance has expired during the period above mentioned ; but the abandonment is invalid, if it is proved that the ship was not lost within the period of insurance.

673.

If in the case mentioned in Art. 671, No. 3 the master forwards the cargo without delay by another ship, there is no right of abandonment.

674.

If the insured elects to abandon, he must give notice thereof to the underwriter within three months.

In the cases mentioned in Art. 671, Nos. 1, 3 and 4, this period is computed from the time when the insured has knowledge of the cause of abandonment.

In case of re-insurance the period is computed from the time when the person re-insured receives notice of abandonment from his insured.

675.

An abandonment must be absolute.

An abandonment must be of the whole subject insured, provided that if the cause of abandonment arises only as to a part thereof, an abandonment may be made of that part only.

If a part of the insurable interest is insured, abandonment may be made according to the ratio of the sum insured to the insurable interest.

676.

When the underwriter has accepted the abandonment, he cannot object to it afterwards.

677.

By the abandonment the underwriter acquires all the rights of the insured in the subject of insurance.

If the insured abandons, he must deliver to the underwriter all documents relating to the subject of insurance.

678.

The insured on abandoning must inform the underwriter of all other insurances on the subject of insurance, and whether any obligations have arisen on account of them, and if so, of what kind.

The underwriter need not pay the sum insured until he has received the information above mentioned.

If a period is fixed for the payment of the sum insured, it is computed from the time when the underwriter receives the aforesaid information.

679.

If the underwriter does not accept the abandonment, the insured can claim the sum insured only on making proof of the cause of the abandonment.

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## CHAPTER VI.

### SHIP'S CREDITORS.

680.

A holder of any one of the following obligations has a preferential right in the ship, her appurtenances and the unpaid freight :—

1. For the expenses of a sale of the ship and her appurtenances at public auction, and for the expenses of preservation after the proceedings for a public sale have been commenced ;
2. For the expenses of the preservation of the ship and its appurtenances at the last port ;
3. For fees and dues payable for the ship in respect of the voyage ;
4. For pilotage and towage ;
5. For the expenses for assistance in distress and salvage, and for the ship's portion of any general average ;
6. Obligations which have arisen from the necessity of continuing the voyage ;
7. Obligations in favour of the master or other mariners arising out of the contract of hiring ;
8. If the ship after having been bought or built has not yet made any voyage, obligations arising from the sale or the building and outfit of the ship ; and also obligations for the outfit, supplies and fuel for her last voyage ;
9. Except as to those mentioned in Nos. 2, 4-6, and 8, the obligations as to which abandonment may be made according to the provisions of Art. 544.

681.

A preferential right of a ship's creditor as to freight exists only in the freight for the voyage on which such preferential right came into existence.

682.

If preferential rights of ship's creditors conflict,

their priority is governed by the order mentioned in Art. 680; but as between those mentioned under Nos. 4-6 of the said article a later right has precedence over an earlier one.

If several ship's creditors have preferential rights of the same rank, they are to receive performance in proportion to the amounts of their respective obligations ; but as between the obligations mentioned in Art. 680, Nos. 4-6, which have not arisen at the same time, a later one has precedence over an earlier one.

If preferential rights have arisen in respect to different voyages, a right in respect to a later voyage takes precedence over one in respect to an earlier voyage, notwithstanding the provisions of the two foregoing paragraphs.

683.

If a preferential right of a ship's creditor conflicts with another preferential right, the former has precedence.

684.

If the owner of a ship assigns it to another person, the assignee, after the assignment has been registered, must give public notice to holders of preferential rights to notify him of the obligations existing in their favour within a certain period which must not be less than one month.

If the holder of a preferential right fails to give such notification within the time limited, his preferential right is extinguished.

685.

A preferential right of a ship's creditor is extinguished after one year from the time when it came

into existence.

The preferential right mentioned in Art. 680, No. 8 is extinguished as soon as the ship has started upon a voyage.

686.

A registered ship can be mortgaged.\*

A mortgage includes also the appurtenances of the ship.

The provisions relating to mortgages of immovables apply correspondingly to mortgages of ships.

687.

A preferential right upon a ship takes precedence of a mortgage.

688.

A registered ship cannot be pledged.

689.

The provisions of this chapter apply correspondingly to ships in course of building.

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\* See Art. 360 *et seq.* of the Civil Code

LAW CONCERNING THE OPERATION  
OF THE COMMERCIAL CODE.

1.

So far as not otherwise provided in this law, the provisions of the former law apply to facts which have arisen before the Commercial Code takes effect.

2.

Special laws and regulations relating to commercial matters remain in force even after the taking effect of the Commercial Code.

3.

So far as special laws or regulations specify that the provisions of the former Commercial Code shall govern, that Code remains in force even after the taking effect of the Commercial Code:

4.

A minor, a wife or a guardian, who has carried on a commercial business from the time before the Commercial Code takes effect, must register in compliance with the provisions of the Commercial Code.

5.

A minor or a wife, who before the taking effect of the Commercial Code has been permitted to become a partner with unlimited liability in a commercial company, is deemed to have from the day of the taking effect of the Commercial Code full capacity as to the business of such company.

6.

The provisions of Art. 7, 2 of the Commercial Code apply from the day of its taking effect also to restrictions imposed upon the right of representation of a guardian before such time.

7.

The meaning of the words "petty traders" in Art. 8 of the Commercial Code shall be determined by Imperial Ordinance.

8.

A registration made before the taking effect of the Commercial Code in compliance with the provisions of the former law has the same effect as one made under the provisions of the Commercial Code.

9.

If a change happens in a fact registered before the taking effect of the Commercial Code, or if such fact ceases to exist, and such change or cessation is not registered before the taking effect of the Commercial Code, registration must be made without delay after such Code has taken effect.

10.

The trade name† of a commercial company whose formation has been registered before the taking effect of the Commercial Code has the same effect as a trade name\* registered in compliance with the provisions of the Commercial Code.

11.

If the trade name† of an ordinary partnership whose

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† "Shamei" 社名.

\* Shōgo 商號.



formation took place before the taking effect of the Commercial Code does not contain the word "Gōmei-kwaisha," the partnership must within three months from the taking effect of the Commercial Code change its trade name to comply with the provisions of Art. 17 of the Commercial Code, and must register such change.

A managing partner who acts in contravention of such provision is liable to a penalty of from five yen to fifty yen.

12.

The provisions of Art. 18 of the Commercial Code do not apply to a trade name which has been in use before the taking effect of the said Code.

13.

The provisions of Art. 19 of the Commercial Code do not apply to a trade name which has been in use before the taking effect of the former Commercial Code.

Even though a person has had his trade name registered after the taking effect of the Commercial Code,

he cannot exercise the rights provided for in Art. 20 of the said Code against a person who has used the same or a similar trade name from the time before the former Commercial Code took effect.

14.

The expressions "city," "town," "village" in Arts. 19, 20, 2, 22, 1 and 289, 3 of the Commercial Code mean, as to places where the laws concerning the organization of cities or towns and villages are not yet in force, the hitherto existing towns or villages or similar districts; as to Tōkyō, Kyōto and Ōsaka the single wards of each city.

15.

A person who has registered his trade name in the City of Tōkyō or Ōsaka before the taking effect of the Commercial Code, must within six months from the day of the taking effect of the Commercial Code register it in the other Register Offices existing in such City.

A person who fails to make the registration above prescribed cannot within the jurisdiction of the Register Offices where such registration is not made exercise the rights provided for in Art. 20 of the Commercial Code.

16.

As to the application of Art. 22, 2 of the Commercial Code, the Hokkaido is considered to be a single *fu* or *ken*.

17.

The provisions of Art. 28 of the Commercial Code apply also to trade books opened before the taking effect of the Commercial Code.

18.

The provisions relating to procurators apply to “*daimunin*” from the day of the taking effect of the Commercial Code.

19.

If a person before the taking effect of the Commercial Code has the denomination of a “*shihainin*” or “*shihaiyaku*” without having the rights specified in Art. 30 of the Commercial Code, the principal must change such denomination within three months from the day when the Commercial Code takes effect.

If the principal does not change such person's denomination within the said period, such person is deemed to have the rights specified in Art. 30 of the Commercial Code.

20.

The provisions of Art. 32, 3 of the Commercial Code apply to a transaction done in violation of the provisions of Art. 50 of the former Commercial Code. The period of one year is computed from the day when the Commercial Code takes effect.

If the principal had knowledge of such transaction before the taking effect of the Commercial Code, the period of two weeks is also computed from the day of its taking effect.

21.

The provisions of the Commercial Code as to agents apply from the day when the Civil Code takes effect also to agents appointed before such time.

22.

So far as not otherwise provided in this law, the provisions of the Commercial Code as to commercial companies\* apply from the day when the Commercial Code takes effect also to commercial companies formed before such time.

23.

As to a commercial company whose formation has been registered at the place of its principal office

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\* See note p. 12.

before the taking effect of the Commercial Code, the period fixed in Art. 47 of that Code is computed from the day of its taking effect.

24.

An ordinary partnership that has been formed before the taking effect of the Commercial Code, but whose formation has not yet been registered, must within one month from the day of the taking effect of the Commercial Code make a partnership contract in writing and make the registration prescribed in Art. 51, 1 of the said Code.

25.

An ordinary partnership whose formation has been registered at the place of the principal office before the day when the Commercial Code takes effect, must within one month from the day of the taking effect of that Code register at the place of the principal office its branch offices, and at the place of each branch office its principal office and its other branch offices, and also the nature of the contributions of the partners and the value of contributions consisting of property.

26.

The provisions of Arts. 51, 2 and 3 and 52 of the Commercial Code apply correspondingly to an ordinary partnership which after the registration of its formation has established a branch office or transferred its principal office or branch office to another place before the taking effect of the Commercial Code. But the time for registration is computed from the day when the Commercial Code takes effect.

27.

If the partners managing the affairs of an ordinary partnership fail to make the registrations prescribed by the preceding two articles, they are liable to a fine of from five yen to fifty yen.

28.

The provisions of Art. 60, 2 and 3 of the Commercial Code apply correspondingly to acts done in violation of the provisions of Art. 104 of the former Commercial Code.

In such case the provisions of Art. 20 apply correspondingly:

29.

The provisions of Art. 71 of the Commercial Code do not apply to an ordinary partnership formed before the taking effect of the Commercial Code.

30.

If the accomplishment of the business forming the object of the partnership becomes completely impossible before the taking effect of the Commercial Code, such partnership is, except in the case where the court has ordered its dissolution, deemed to have been dissolved at the time of the taking effect of the Commercial Code.

31.

An ordinary partnership which has been dissolved before the taking effect of the Commercial Code but has not yet appointed liquidators, must have its dissolution registered in compliance with the provisions of Art. 76 of the Commercial Code within two weeks from the taking effect of that law.

32.

An ordinary partnership which has been dissolved and has already appointed liquidators before the taking effect of the Commercial Code, must have such facts registered in compliance with the provisions of Arts. 76 and 90 of the Commercial Code within two weeks from the taking effect of that law.

33.

The public notifications to be made according to the provisions of Art. 78, 2 of the Commercial Code must be made in the same manner as notifications of facts registered which are to be published by the court.

34.

An ordinary partnership which has been dissolved before the taking effect of the Commercial Code, but has not yet appointed liquidators, may by the consent of all the partners determine the manner in which the property of the partnership is to be disposed of. In such case an inventory and balance-sheet must be made out within two weeks from the taking effect of the Commercial Code.

In the foregoing case the provisions of Arts. 78, 2, 79 and 80 of the Commercial Code apply correspondingly.

35.

If the dissolution of an ordinary partnership has been registered before the taking effect of the Commercial Code, liquidation is to be effected in accordance with

the provisions of the former Commercial Code.

36.

If liquidators of an ordinary partnership are removed or changed before the taking effect of the Commercial Code, registration must be made in compliance with the provisions of Art. 97 of the Commercial Code within two weeks from the taking effect of that law.

37.

The provisions of Art. 103 of the Commercial Code apply also to an ordinary partnership which has been dissolved before the taking effect of the Commercial Code.

38.

To a limited partnership formed before the taking effect of the Commercial Code the provisions of the former Commercial Code apply.

The provisions of Arts. 23, 25-32 and 35-37 apply correspondingly to such partnership.

39.

A limited partnership formed before the taking effect of the Commercial Code must designate on all papers relating to its business that it was formed before the said time.

Managing partners acting in contravention of the foregoing provisions are liable to a fine of from five yen to fifty yen.

40.

A limited partnership formed before the taking effect

of the Commercial Code may on complying with the provisions of Art. 151, 2 of the former Commercial Code change its organization into that of such limited partnership, joint stock company or joint stock limited partnership as provided for in the Commercial Code.

In such case the general meeting must without delay pass resolutions on all matters necessary for the organization of the new commercial company.

41.

The provisions of Arts. 78, 79, 1 and 2 and 254 of the Commercial Code apply correspondingly to the case mentioned in the preceding article.

42.

A limited partnership formed before the taking effect of the Commercial Code may effect a consolidation in compliance with the provisions of the Commercial Code; but for the commercial company which is to continue after the consolidation or which is to be formed by the consolidation, one of the species of commercial companies provided for in the Commercial Code must be selected.

The resolution of consolidation must comply with the provisions of Art. 151, 2 of the former Commercial Code.

43.

If permission for promoting a joint stock company has been granted before the taking effect of the Commercial Code, it is not required that there should be so many as seven promoters.

44.

The provisions of the Commercial Code apply to a



joint stock company, if before the taking effect of that law permission for its promoting has been granted but subscriptions for shares have not yet been invited.

45.

If the promoters of a joint stock company have commenced to invite subscriptions for shares before the taking effect of the Commercial Code, they may effect the formation of the company in accordance with the provisions of the former law ; but they must make a company contract according to the provisions of the Commercial Code.

46.

If before the taking effect of the Commercial Code a company contract has been determined upon in the general meeting for organization, such contract must be changed in accordance with the provisions of the Commercial Code.

47.

The provisions of Art. 130 of the Commercial Code apply also in the cases of the preceding two articles.

48.

The provisions of Art. 163, 1 and 2 of the Commercial Code apply correspondingly to the resolutions of a general meeting for organization called according to the provisions of the former Commercial Code. But if a resolution has been passed before the taking effect of the Commercial Code, the period fixed in Art. 163, 2 is computed from the day when that law takes effect.

49.

If in case of Art. 45 all the shares are taken before the taking effect of the Commercial Code, and the promoters do not call a general meeting within six months from the day of the taking effect of that law, or if the taking of all the shares has been completed only after the taking effect of the Commercial Code, and the promoters do not call a general meeting within the same period from such day, the subscribers for shares may rescind their subscriptions.

50.

In the cases mentioned in Arts. 45 and 46 a joint stock company must within two weeks after one quarter of the whole amount has been paid in upon all the shares effect the registration prescribed in Art. 141, 1 of the Commercial Code.

51.

A joint stock company which has registered its formation at the place of its principal office before the taking effect of the Commercial Code, but has omitted to make provisions in its company contract as to the matters mentioned in Art. 120, Nos. 1-7 of the Commercial Code must change the company contract within three months from the day of the taking effect of the Commercial Code.

52.

A joint stock company which has registered its formation at the place of its principal office before the taking effect of the Commercial Code must within three months from the day of the taking effect of that Code register at the place of the principal office its

branch offices, and at the place of each branch office its principal office and its other branch offices, and also the manner in which the public notifications to be issued by the company are to be made, as well as the names and domiciles of the inspectors.

53.

If a joint stock company which has been formed before the taking effect of the Civil Code has not registered alterations which have taken place in facts entered in the Commercial Register, it must register such alterations at the place of the principal office and of each branch office within two weeks from the day of the taking effect of the Commercial Code.

If facts to be registered in accordance with the provisions of the former Commercial Code have happened before the taking effect of the Commercial Code, the foregoing provisions apply correspondingly only if in the former Commercial Code no time is fixed within which registration must be effected.

54.

If a director acts in contravention of the provisions of the preceding three articles, he is liable to a fine of from five yen to fifty yen.

55.

If in the case of a joint stock company formed before the taking effect of the Commercial Code the amount in money of the shares, although not in accordance with the provisions of Art. 145, 2 of the Commercial Code, is in accordance with the provisions of the former Commercial Code and the law concerning the

operation of that Code, the provisions of the company contract may govern. The same applies, if new shares are issued after the taking effect of the Commercial Code.

The foregoing provisions do not apply in case the amount in money of the shares is changed after the taking effect of the Commercial Code.

56.

The provisions of the Commercial Code as to share certificates apply also to provisional share certificates issued before the taking effect of the Commercial Code.

57.

Even though share certificates or provisional share certificates issued before the taking effect of the Commercial Code are in contravention of the provisions of Art. 148 or Art. 218 of the Commercial Code, they need not be amended. But if after the taking effect of the said law any payment is made upon the shares, there must be inserted in the provisional share certificate the amount formerly paid as well as the amount afterwards paid.

58.

The provisions of Arts. 212-215 of the former Commercial Code apply only in case a call for a payment on shares has been made before the taking effect of the Commercial Code.

59.

The provisions of Art. 153, 2-4 of the Commercial Code do not apply if a person who has assigned shares before the taking effect of the Commercial Code

is not bound to give security according to the provisions of Art. 182 of the former Commercial Code.

60.

A joint stock company which according to the provisions of any law or regulation can be organized by Japanese subjects only, or a joint stock company which has special rights on the condition that it be organized by Japanese subjects only, cannot issue shares to bearer. If this provision is violated, such shares are void, and the last name-shareholder stands as the shareholder.

Directors who issue shares to bearer in contravention of the foregoing paragraph are liable to a fine of from one hundred yen to one thousand yen.

61.

In the case of a joint stock company formed before the taking effect of the Commercial Code, restrictions upon the voting rights of the shareholders may be governed by the provisions of the company contract, even though such restrictions should not be in accordance with the provisions of Art. 162 of the Commercial Code ; but this does not apply to a change made in such restrictions after the Commercial Code has taken effect.

62.

The provisions of Art. 163 of the Commercial Code apply also, if a general meeting of shareholders has passed a resolution before the taking effect of the Commercial Code. The period mentioned in Art. 163, 2, however, is computed from the taking effect of the said Code.

63.

The proviso of Art. 167 of the Commercial Code does not apply to directors and inspectors appointed before the taking effect of the Commercial Code.

64.

The office of a director or inspector terminates if he is adjudged incompetent, even though he has been appointed before the taking effect of the Commercial Code.

65.

A director appointed before the taking effect of the Commercial Code must without delay after its taking effect deposit with the inspectors the number of shares prescribed by the company contract.

66.

If in case of a joint stock company formed before the taking effect of the Commercial Code a payment on shares is made after its taking effect, the directors must enter the date of such payment in the list of shareholders.

67.

The directors of a joint stock company formed before the taking effect of the Commercial Code must without delay after its taking effect enter in the debenture list the whole amount of the debentures and the manners in which repayment is to be made.

68.

If a joint stock company has lost half the amount of

its capital before the taking effect of the Commercial Code, the directors must without delay after its taking effect call a general meeting of shareholders and inform them thereof.

If before the taking effect of the Commercial Code the property of a joint stock company has become insufficient to fully meet its obligations, the directors must without delay after the taking effect of the Commercial Code apply to the court to have the company adjudged bankrupt.

69.

If directors act in contravention of the preceding three articles, they are liable to a fine of from five yen to one hundred yen.

70.

The provisions of Art. 175 of the Commercial Code do not apply to directors appointed before the taking effect of the Commercial Code.

71.

The provisions of Art. 189 of the former Commercial Code apply to directors appointed before the taking effect of the Commercial Code.

72.

The provisions of the Commercial Code do not apply to actions brought according to the provisions of Art. 228 or Art. 229 of the former Commercial Code before the taking effect of the Commercial Code.

73.

The period of office of inspectors appointed before the taking effect of the Commercial Code remains un-

changed even though it extends over more than one year.

74.

If a call for a general meeting has been published before the taking effect of the Commercial Code, it is sufficient if the documents mentioned in Art. 190 of the Commercial Code are submitted to the inspectors at any time up to the day of the meeting.

75.

The provisions of Art. 196 of the Commercial Code apply also, if it appears that the business operations of a joint stock company whose formation has been registered at the place of its principal office before the taking effect of the Commercial Code cannot be commenced within two years after such registration.

When the court has sanctioned the provision of the company contract, the directors must have it registered within two weeks at the place of the principal office and of each branch office.

If the directors fail to make such registration, they are liable to a fine of from five yen to fifty yen.

76.

The law No. 60 of the 23rd year of Meiji is repealed from the day when the Commercial Code takes effect.

77.

If a joint stock company has obtained permission for the issue of debentures before the taking effect of the Commercial Code, it may continue inviting subscriptions for them according to the provisions of the former law.



78.

The provisions of Art. 204, 1 of the Commercial Code do not apply in case a joint stock company has obtained permission for the issue of debentures before the taking effect of the Commercial Code.

79.

If a joint stock company has obtained permission for the issue of debentures before the taking effect of the Commercial Code and the whole amount has not been paid up at once, it must within two weeks after the first payment register at the place of the principal office and of each branch office the amount paid in and the facts mentioned in Art. 173, Nos. 3-6 of the Commercial Code.

80.

If the amount of the debentures has been wholly or partially paid in before the taking effect of the Commercial Code, the company must within two weeks from its taking effect register at the place of the principal and of each branch office the amount paid in and the facts mentioned in Art. 173, Nos. 3-6 of the Commercial Code.

81.

Debentures issued before the taking effect of the Commercial Code need not be amended, even though they are in contravention of the provisions of Art. 205 of that Code.

The proviso of Art. 57 applies correspondingly to debentures.

82.

The provisions of Art. 209, 2 of the Commercial Code

apply also in case a provisional resolution has been passed, but notice thereof has not been given before the taking effect of the said Code.

83.

The provisions of Art. 209, 4 of the Commercial Code do not apply when a resolution or provisional resolution to alter the company contract has been passed by a joint stock company before the taking effect of the Commercial Code.

84.

A joint stock company which before the taking effect of the Commercial Code has passed a resolution or a provisional resolution to increase or to reduce its capital, may make such increase or reduction in accordance with the provisions of the former Commercial Code.

In such case the provisions of Arts. 128-130 of the Commercial Code apply correspondingly.

85.

If the capital of a company has been increased in pursuance of a resolution or a provisional resolution passed before the taking effect of the Commercial Code and a registration of the amounts paid in on the new shares before such time has not been effected, such registration must be made at the place of the principal and of each branch office within two weeks from the day of its taking effect, and if payments are made after such time, within two weeks from the respective days of payment.

86.

If a joint stock company which has been dissolved before the taking effect of the Commercial Code has not

yet passed a resolution of dissolution, the directors must without delay after the taking effect of the Commercial Code give notice of the dissolution to the shareholders.

87.

If directors act in contravention of the preceding two articles, they are liable to a fine of from five yen to fifty yen.

88.

The liquidators of a joint stock company must follow the directions given by a general meeting of shareholders or by the court before the taking effect of the Commercial Code.

89.

A "*dainin*" appointed before the taking effect of the Commercial Code in accordance with the provisions of Art. 242 of the former Commercial Code retains his powers even after the taking effect of the Commercial Code.

90.

The provisions of Art. 33 apply correspondingly to public notifications to be made by the liquidators of a joint stock company which has been dissolved before the taking effect of the Commercial Code.

91.

The provisions of Arts. 26, 30-32, 35 and 36 apply correspondingly to joint stock companies.

92.

As to foreign commercial companies\* which have set up a branch office in Japan before the taking effect of the Commercial Code, special regulations may be made by Imperial Ordinance. The same applies as to commercial companies or associations formed in Japan by foreigners before the taking effect of the Commercial Code.

93.

If before the taking effect of the Commercial Code an act has been done, as to which under the former law a penalty relating to commercial companies is to be applied, such penalty applies also after its taking effect.

94.

Until a revision of the Imperial Ordinance, No. 12, of the 20th year of Meiji as to private railway companies has been effected, the provisions as to joint stock companies contained in the former Commercial Code and in its accessory laws and regulations apply to private railway companies.

(Arts. 95-116 repealed.)

117.

The provisions of Art. 5 of the Law, No. 66, of the 10th year of Meiji concerning restrictions on interest do not apply to commercial matters.

118.

As to the enforcement of a pledge made before the taking effect of the Commercial Code, unless a different

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\* See Note p. 12.

intention is expressed, the provisions of the law relating to public auctions apply ; but securities and other goods, having an exchange quotation may be sold at the exchange by the *shuttatsuri*.\*

These provisions apply correspondingly to the sale of things retained by a person entitled thereto.

119.

Unless otherwise provided by this Code, the provisions of the former Commercial Code apply to instruments to order or bearer issued before the taking effect of the Commercial Code ; but this does not affect the application of Art. 30, 31 and 33 of the Law Concerning the Operation of the Civil Code.

120.

The provisions of Art. 281 of the Commercial Code apply also to instruments to order and bearer issued before the taking effect of the Commercial Code.

121.

The provisions of Art. 299 of the Commercial Code apply also to anonymous associations formed before the taking effect of the Commercial Code.

122.

The meaning of "navigation in lakes and rivers, ports and bays" and of "small coasting voyages" is determined by the Minister of Communication.

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\* See note p. 141.

123.

The right of recourse of the holder of a bill against prior parties is extinguished by prescription after six months, to be computed, if the protest is made before the taking effect of the Commercial Code, from the day of its taking effect, or if the protest is made after such time, from the day of its making.

The right of recourse of an indorser against prior parties is extinguished by prescription after six months to be computed, if payment on recourse is made before the taking effect of the Commercial Code, from the day of its taking effect, or if payment on recourse is made after such time, from the day of payment.

If the remainder of a period of prescription which began to run from a time before the taking effect of the Commercial Code is, computed from the day of its taking effect, shorter than six months, prescription is completed on the expiration of such remaining time.

124.

The provisions of Art. 28 of the Law, No. 2, of the 19th year of Meiji relating to notaries do not apply to the making of a protest by a notary.

125.

The requirements of any act relating to a bill done in a foreign country are governed by the law of the place of such act.

If an act relating to a bill done in a foreign country complies with the requirements of Japanese law, but not with those of the foreign law, any act relating to the bill afterwards done in Japan is valid, irrespective

of the foregoing provision. The same applies if an act relating to a bill done in a foreign country by a Japanese subject against a Japanese subject complies with the requirements of Japanese law.

126.

The forms of an act done in a foreign country for the exercise or maintenance of a right under a bill are governed by the law of the place where the act is done,

127.

The provisions of Art. 552, 3 of the Commercial Code apply also to a ship's husband appointed before the taking effect of the Commercial Code.

The provisions of Art. 553 of the Commercial Code apply also from the day of its taking effect to a person appointed before such time to be a ship's husband.

128.

The provisions of Art. 556 of the Commercial Code apply also to the hiring of a ship made before the taking effect of the Commercial Code.

129.

The provisions of Arts. 558-568 and 570-574 of the Commercial Code apply also from the day of its taking effect to a person appointed before such time to be master of a ship.

130.

The form of the papers mentioned in Art. 562, 1, Nos. 2-5 of the Commercial Code is determined by the Minister of the Communication.

131.

If a cause for abandonment arises after the taking effect of the Commercial Code, an insured may abandon in accordance with the provisions of the Commercial Code even under an insurance contract made before such time.

132.

If it is not known for six months from the taking effect of the Commercial Code whether a ship is in existence or not, such ship is deemed to be missing, even though the period specified in Art. 966, 1 of the former Commercial Code has not yet elapsed.

133.

If at the time of the taking effect of the Commercial Code the period of three days specified in Art. 969, 1 of the former Commercial Code is not yet completed, abandonment may be made by giving within three months the notice mentioned in Art. 674 of the Commercial Code.

134.

The provisions of the Commercial Code as to preferential rights on ships apply also to obligations which have arisen before the taking effect of the Commercial Code.

135.

The provisions of Art. 33 apply to public notifications to be made under the provisions of Art. 684, 1 of the Commercial Code.



136.

The provisions of the Commercial Code as to mortgages on ships apply also to mortgages created before the taking effect of the Commercial Code.

137.

The provisions of Arts. 2, 3, 30, 31, 33, 34, 53 and 56 of the Law Concerning the Operation of the Civil Code apply correspondingly to commercial matters.

138.

Art. 978 of the Commercial Law, No. 32, of the 23rd year of Meiji is amended as follows :

“ If a trader suspends payments, he is to be adjudged bankrupt on his own application or that of any of his creditors. ”

“ The court may decide without oral proceedings. Against such decision an immediate complaint\* may be made. ”

139.

A creditor who applies for an adjudication of bankruptcy must pay in advance the costs of the proceedings as determined by the court.

If the creditor omits to do so, the court may refuse the application for an adjudication of bankruptcy.

140.

If a trader himself applies for an adjudication of bankruptcy, the costs of the proceedings in bankruptcy must be paid provisionally by the Treasury. The

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\* See Art. 466 of the Code of Civil Procedure.

same applies, if in case a creditor has made such application, the court does not refuse it as provided in Art. 139, 2.

141.

In bankruptcy matters the judicial court may require the District and Local Courts to do juridical acts in its aid.

142.

Art. 1051, No. 5, of the Commercial Law, No. 32, of the 23rd year of Meiji is amended as follows :

“ 5. If in violation of his duty he neglects to make an inventory or balance-sheet or to give notice of his suspension of payments, or if he leaves his place of abode without the permission of the court.”

143.

Art. 1054 of the Commercial Law, No. 32, of the 23rd year of Meiji is amended as follows :

“ A debtor adjudged bankrupt cannot until he has obtained rehabilitation become a partner with unlimited liability in a commercial company, a managing partner of a limited partnership created under the provisions of the former Commercial Code, a director or inspector of a joint stock company, a liquidator, an administrator of a bankrupt estate or a member of a chamber of commerce.”

144.

Art. 1055, 3 of the Commercial Law, No. 32, of the 23rd year of Meiji is repealed.

145.

Art. 1059 of the Commercial Law, No. 32, of the 23rd year of Meiji is amended as follows :

“ If a trader without any fault of his own becomes unable to continue payments of his obligations arising from commercial transactions, the court having jurisdiction of the place of his business or his domicile may with the consent of a majority of his creditors grant him a time of respite for not longer than one year.”

146.

This law takes effect at the time of the taking effect of the Commercial Code.

147.

The Regulations, No. 59, of the 23rd year of Meiji concerning the Operation of the Commercial Law, except Arts. 20, 24, 25, 35-45 and 48-50, are repealed from the day when this law takes effect ; but the provisions of Arts. 21-23 and 51 continue in force as to matters where the former Commercial Code is to govern.

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IMPERIAL ORDINANCE, No. 271,  
OF JUNE 15TH, 1899.

Petty trader is whosoever carries on a commercial business with a capital of less than five hundred yen.

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LAW, No. 17, OF FEBRUARY 24TH, 1900.

If under the provisions of the Commercial Code a signature is to be made, instead of such signature the name-stamp together with the name may be affixed to the document.

IMPERIAL ORDINANCE, No. 380, OF  
SEPTEMBER 27TH, 1900, RELATING  
TO FOREIGN INSURANCE  
COMPANIES.

I.

If a foreign insurance company sets up an agency in Japan for carrying on insurance business, it must appoint a representative.

The provisions of Art. 62 of the Commercial Code apply correspondingly to such representative.

2.

A foreign company must report to the competent authorities the principal place of its business in Japan and the name and domicile of its representative.

3.

A foreign company must annex the following documents to the written application for permission :

1. The company contract (articles of association);
2. A statement showing the method in which business is to be done in Japan ;
3. The general conditions of insurance ;
4. A document stating the basis of the calculation of premium and premium reserve ;
5. The last inventory, balance-sheet and profit and loss account ;
6. In the case of a life insurance company a statement showing the method of investing reserve.

Any alteration made in the documents mentioned under Nos. 1-4 and 6 is valid only if reported to the competent authorities.

4.

If a foreign company acts in contravention of an order of the competent authorities, the latter may either suspend the prosecution of its business in Japan, or order a change of its representative, or cancel the permission granted.

5.

If the competent authorities consider it necessary, they may order a foreign company to deposit a proper amount of money.

The company may deposit securities approved of by the competent authorities.

6.

Any insurer or insured and any person who is to receive the insurance money, residing in Japan, and the members of a foreign mutual insurance company have a right of precedence in the deposit.

7.

The ordinary creditors of a foreign mutual insurance company, residing in Japan, have a right of precedence in the deposit as against the members of the company and the creditors residing in a foreign country.

8.

A foreign company must once a year at a fixed time make a report as to its business in Japan and present it to the competent authorities.

9.

A foreign company must without delay present to the competent authorities the inventory, balance-sheet, business report and profit and loss account made in its home country.

10.

The representative of a foreign company must keep at the principal place of business in Japan the company contract, a list of the members residing in Japan, and the documents mentioned in the preceding two articles.

Any insurer or insured and any person who is to receive the insurance money, residing in Japan, may inspect the documents mentioned in the preceding two articles, and may demand copies of or extracts from them on paying a fee as determined by the company contract or the contract of insurance.

11.

When a foreign company has ceased doing business, or when the permission has been cancelled, the restoration of the deposit can be demanded only if performance has been made to the persons who under Arts. 6 and 7 have a right of precedence, or if security has been given to them.

12.

When the competent authorities cancel the permission granted to a foreign company which has set up a branch office or an office in Japan, such fact must, as soon as the order has become finally binding, be reported to the Registry Office of the place of such branch office or office.

The Registry Office on receiving such report must cancel the registration of such branch office or office.

13.

A representative of a foreign company is liable to a fine of from five yen to five hundred yen :—

1. If he omits to make a registration provided for in this Ordinance ;
2. If he does not keep the documents mentioned in Art. 8 or Art. 9 ; if he does not insert therein particulars which should be inserted, or if he makes false statements therein.

14.

A representative of a foreign company is liable to a fine of from ten yen to one thousand yen :—

1. If he carries on business other than insurance business ;
2. If he carries on the business of life insurance together with the business of insurance against loss ;
3. If he acts in contravention of an order of the competent authorities ;
4. If he obstructs an enquiry made by the competent authorities ;
5. If he makes false statements to the competent authorities or conceals facts from them ;
6. If he without just reason does not allow any inspection of documents which he is bound to allow according to the provisions of this Ordinance, or does not deliver copies of or extracts from them.

15.

The provisions of Arts. 206-208 of the Law concerning Procedure in Non-contentious Matters apply correspondingly to the fine provided in the preceding two articles.

16.

The provisions of Arts. 1, 3, 4, 7, 9-11 and 97 of the Law concerning the Business of Insurance apply correspondingly to foreign companies.

Arts. 1, 3, 4, 7, 9-11 and 97 of the Law concerning the Business of Insurance read as follows :

I.

The business of insurance can only be carried on on obtaining the permission of the competent public authorities.

3.

An insurance company must not carry on another business.

4.

The same company must not carry on the business of life insurance and the business of insurance against loss.

7.

In the general conditions of insurance the following facts must be specified :

1. The grounds for which the insurance company will be liable to pay the insurance money ;
2. The reasons for which the contract of insurance will become invalid ;
3. The grounds for which the insurance company becomes free from its obligation ;
4. The manner in which the extent of the obligations of the insurance company is determined, and the time of their fulfilment ;



5. The prejudice arising to the insurer or insured in case he does not fulfil his obligations ;
6. The grounds for which the insurance contract may be partly or wholly cancelled, and the rights and duties which the persons concerned will have in such a case ;
7. The effect and extent of the rights of the insurer, the insured, or the person who is to receive the insurance money in regard to the distribution of profits and surplus.

9.

The affairs of the insurance companies are subject to the supervision of the competent public authorities. The latter may issue the necessary rules for the enforcement of the provisions of the documents mentioned in Arts. 5 and 6.

10.

The competent public authorities may at any time require an insurance company to make a report on its business, and may examine into the affairs of the company and the state of its property.

11.

If the Government finds on the ground of the management of the affairs of an insurance company or of the state of its property that the continuance of the business is endangered, the Government may order that the prosecution of the business be suspended, or may fix a time within which the method of conducting the affairs of the company or the standard of its accounts must be changed, or may issue any other orders necessary for the protection of the rights of the insured or of the persons who are to receive the insurance money.

97.

A person who carries on the business of insurance without having obtained the permission of the competent public authorities is liable to a fine of from ten yen to one thousand yen.

17.

The provisions of Arts. 9, 11-15, 19-38, 40, 41, 255-258 of the Commercial Code and of Arts. 85, 86, 90 and 91 of the Law concerning the Business of Insurance apply correspondingly to foreign mutual insurance companies.

Arts. 85, 86, 90 and 91 of the Law concerning the Business of Insurance read as follows :

85.

The name-book of a mutual insurance company is considered to be a part of the Registry Book, and any entries in such book are considered as registrations.

86.

The registration of the appointment of a "procurator"—*shihainin*—of a mutual insurance company is made on the application of all the directors.

This provision applies correspondingly to the registration of the extinguishment of the right of representation of a procurator or of his removal.

90.

When a mutual insurance company effects registration, it must pay the same registration fee as an association being a juridical person whose object is not the making of profit.

91.

Mutual insurance companies need not pay business tax.

18.

In every Registry Office must be kept a Register for Foreign Mutual Insurance Companies.

19.

When a foreign mutual insurance company which

has set up an office in Japan, applies for registration. Its representative must specify in the application its principal place of business in Japan and the name and domicile of its representative, and must annex the following documents :

1. A document sufficient to prove the existence of a head office ;
2. A document showing the qualification of the representative as such ;
3. The company contract or a document sufficient to show the nature of the company ;
4. A list of the members in Japan ;
5. The document of permission issued by the competent authorities or a certified copy of it.

The papers mentioned under Nos. 1-3 must be certified by the competent authorities of the Home Government or by its Consul residing in Japan.

20.

When a representative of a foreign mutual insurance company applies for the registration of the appointment of a "procurator," he must insert in the application the date of the setting up of the company's office in Japan and must annex a document showing the appointment of the procurator.

21.

The provisions of Arts. 139, 141-149, 151, 154-165, 173, 1 ; 174, 2 ; 203 and 204 of the Law concerning Procedure in Non-contentious Matters\* apply correspondingly to foreign mutual insurance companies.

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\* See Dr. Loenholm's "New Japanese Laws."

22.

The provisions of Arts. 1-6, 8-11 and 13-16 of this Ordinance and of Arts. 13-16 of the Law concerning Procedure in Non-contentious Matters apply correspondingly when an alien sets up a branch office or an agency in Japan for carrying on insurance business.

ADDITIONAL PROVISIONS.

23.

This Ordinance takes effect from the 15th of November, 1900.

24.

An alien who, or a foreign company which, has set up in Japan a branch office, an office or an agency before the taking effect of this Ordinance must report the principal place of business in Japan to the competent authorities within six months from the taking effect of this Ordinance.

25.

The provisions of Arts. 4-15, 17 and 20 of this Ordinance, Arts. 1, 3, 4, 9-11 and 97 of the Law concerning the Business of Insurance apply correspondingly to aliens who, or foreign companies which, have set up in Japan a branch office, an office or an agency before the taking effect of this Ordinance.

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REGULATIONS OF THE DEPARTMENT OF  
AGRICULTURE AND COMMERCE, NO. 19,  
OF OCTOBER 1ST, 1900, RELATING TO  
FOREIGN INSURANCE COMPANIES.

I.

The application for permission for the carrying on of insurance business by a foreign company must be made by its representative. In addition to the documents specified in Art. 3 of the Imperial Ordinance, No. 380, of the year 1900, there must be annexed to the application a document sufficient to show the existence of a head office or of a principal place of business.

2.

In case a foreign insurance company applies for authorization to alter any of the documents mentioned in Art. 3, paragraph 1, Nos. 1-4 and 6 of the Imperial Ordinance, No. 380, of the year 1900, a document setting forth the ground for such alteration must be annexed.

3.

As soon as a foreign company has made a registration according to the provisions of the Commercial Code or of the Imperial Ordinance, No. 380, of the year 1900, the facts registered and the date of registration must be reported to the Minister of Agriculture and Commerce; but this does not apply to entries made in the Name-Book of Members of Mutual Insurance Companies.

4.

If a foreign company is dissolved or consolidated with another company, or if it changes its organization, such fact must without delay be reported to the Minister of Agriculture and Commerce.

5.

The provisions of Art. 6-8, 10 and 14-21 of the Regulations of the Department of Agriculture and Commerce, No. 15, of the year 1900, apply correspondingly to insurance business carried on in Japan by foreign companies.

6.

The provisions of Arts. 24-26 of the Regulations of the Department of Agriculture and Commerce, No. 15, of the year 1900 apply correspondingly to foreign companies.

Arts. 6-8, 10, 14-21 and 24-26 of the Regulations cited in Arts. 5 and 6 read as follows :

6.

An insurance company must present to the Minister of Agriculture and Commerce a copy of the forms of the policy and application and also of all printed matters made for the purpose of advertisement.

7.

In the policy must be inserted the whole of the conditions of insurance, or a document containing such conditions must be annexed to it.

8.

A life insurance company must in regard to the extent of the rights specified in Art. 7, Nos. 6 and 7 of the Law concerning the Business of Insurance insert in the policy the amount

to be refunded to the person concerned, its standard or a table sufficient to show such amount, made out *mutatis mutandis* according to form 13, or must annex to the policy a document stating these items.

The same applies if provisions are made as to loans to be given on a policy, or as to a diminution of the insurance money on account of the remission of the payment of future premiums.

10.

The following facts must be inserted in the Business Account, and the directors and inspectors must affix their signatures or name-stamps, namely ;

1.—Any alteration of the company contract—statute—or of the general conditions of insurance and other important matters, which have happened during the business year ;

2.—The result of the business (to be made up *mutatis mutandis* according to form No. 1) ;

3.—In the case of life insurance and of fire insurance, statistics (to be made up *mutatis mutandis* according to forms Nos. 2-7 or to form No. 8 respectively).

14.

An insurance company must appropriate the following amounts as outstanding losses :

1.—If insurance money is to be paid or money to be refunded during the business year, the amount of the money not yet paid ;

2.—If it appears that on account of circumstances arising during the business year insurance money is to be paid or money to be refunded, an amount sufficient for such payments.

15.

The reserve fund of a life insurance company must be divided into a premium reserve fund and unexpired premium.

16.

If a life insurance company does not calculate its premium reserve fund according to the net premium system, it must add in the balance-sheet below the reserve fund the amount

of money calculated according to the net premium system, and must submit it to the Minister of Agriculture and Commerce.

17.

If in the case of a life insurance company the unexpired premiums are not computed as to each contract, they must not be less than one-fourth of the premiums received during the respective business year.

18.

The reserve fund of a company carrying on the business of insurance against loss must not be less than the amount remaining after deducting from the premiums received during the business year—premiums paid to re-insurers excepted—(a) the insurance money paid on account of contracts for which premiums have been received during the respective business year—insurance money received from insurers excepted—(b) the fund for payments to be appropriated on the account of such contracts and (c) the business expenses of such business year.

19.

When a company carrying on the business of insurance against loss has made contracts according to which the whole or a part of the insurance money must be refunded in case the risk does not arise, the portion to be used for such repayments must first be deducted from the premiums received during the business year and then in regard to the remaining amount the computation as provided for in the preceding article must be made.

The reserve fund of a company must not be less than the joint amount of the money appropriated for repayments and of the total amount of the remaining money as computed according to the foregoing article.

20.

If the reserve fund as computed according to the provisions of the foregoing articles is in sufficient with regard to the unexpired period of the insurance contracts, the company must supply a proper additional amount.



21.

The tables of statistics used for the computation of the reserve fund, the tables of account and all materials required for knowing the basis and order of such computation must be kept until the next following computation of the reserve fund has been terminated.

24.

The documents to be presented to the Minister of Agriculture and Commerce by the promoters of an insurance company or by an insurance company must be forwarded through the highest administrative official of the place where the head office or the principal place of business is situated.

For the aforementioned documents strong paper of the Mino paper size must be used. But this does not apply to printed matters.

25.

To those documents to be presented to the Minister of Agriculture and Commerce by the promoters of an insurance company or by an insurance company, which are not written in Japanese language, a translation must be annexed.

26.

To those items in the documents to be presented to the Minister of Agriculture and Commerce by the promoters of an insurance company or by an insurance company, in which the amount is calculated in foreign currency, the amount made out in Japanese currency calculated according to the comparative table of foreign and Japanese currency as published by the Minister of Finance must be added.

7.

The provisions of the preceding five articles apply correspondingly to foreign insurance companies which have been granted permission before the taking effect of these Regulations; but within one year from the

taking effect of these Regulations they need not comply with the provisions of Art. 8 of the Regulations of the Nōshōmusho, No. 15, of the year 1900.

ADDITIONAL PROVISIONS.

8.

These Regulations take effect from November 15th, 1900.

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